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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 227

UNITED MINE WORKERS OF AMERICA, ET AL.,
PETITIONERS,

v.

ARKANSAS OAK FLOORING COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR CERTIORARI FILED JULY 12, 1955

CERTIORARI GRANTED OCTOBER 17, 1955

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 227

UNITED MINE WORKERS OF AMERICA, ET AL.,
PETITIONERS,

vs.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

INDEX

	Original	Print
Record from Ninth Judicial District Court for the Parish of Rapides, State of Louisiana	1	1
Minute entries	1	1
Petition	3	3
Affidavit of J. G. Smith and S. C. Griffith	7	6
Temporary restraining order	9	7
Injunction bond (omitted in printing)	11	
Exception to citation	12	8
Exception to jurisdiction	14	9
Exception of vagueness	16	10
Return to rule to show cause	18	11
Plaintiff's Exhibit I—Letter dated March 8, 1954, from N.L.R.B. to John L. Pitts	23	14
Defendants' Exhibit "D-1"—Unsigned membership application blank	25	15
Defendants' Exhibit "D-2"—Signed membership application blank	26	16
(178) Similar signed membership application blanks (omitted in printing)	27	

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—5127-6

	Original	Print
Record from Ninth Judicial District Court for the Parish of Rapides, State of Louisiana—Continued		
Injunction bond (omitted in printing)	86	
Judgment on preliminary injunction	87	17
Motion for and order of appeal	88	18
Appeal bond (omitted in printing)	89	
Testimony on exception to citation	91	19
Appearances	91	19
Testimony of James Ledbetter	94	20
Testimony on exception to jurisdiction	99	24
Testimony of J. G. Smith	101	24
Cornelius Wesley Brown	106	28
Testimony on merits	116	35
Testimony of S. C. Griffith	118	35
J. G. Smith	126	42
James L. Ledbetter	129	45
George Fowler	141	57
Clerk's certificate (omitted in printing)	146	
Minute entries	148	60
Answer	150	62
Stipulation as to evidence	154	64
Judgment on permanent injunction	155	65
Motion and order of appeal	156	66
Appeal bond (omitted in printing)	157	
Clerk's certificate (omitted in printing)	159	
Proceedings in the Supreme Court of the State of Louisiana	161	67
Motion to consolidate appeals and order thereon	162	67
Motion for preference	164	68
Opinion, Fournet, J.	165	69
Opinion, dissenting in part, Hawthorne, J.	184	83
Application for rehearing	187	86
Minute entry of action by the Court upon application for rehearing	201	101
Clerk's certificate	202	101
Order allowing certiorari	203	101

[fol. 1]

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

City of Alexandria, Friday, March 12, 1954.

The District Court, civil section, met this day according to law, His Honor Judge Allen V. Hundley presiding. Previous minutes were read and approved.

* * * * * * *

MINUTE ENTRIES

43,739—Arkansas Oak Flooring Company vs. United Mine Workers of America, et al.: This cause coming on this day on rule, pursuant to assignment, was called. Exception to citation filed. Exceptions to jurisdiction and vagueness filed. Answer to rule filed. James Ledbetter sworn and testimony adduced. Exception to the citation argued, submitted and over-ruled by the Court. Exception to the jurisdiction argued. Mr. J. G. Smith sworn and testimony adduced. By agreement of counsel, case continued to Monday, March 15, 1954, at 10:00 A.M. Counsel for plaintiff moved the Court to continue in effect the temporary restraining order heretofore granted. Counsel for defendant objected. Objection over ruled by the Court. Motion granted, and the temporary restraining order is to remain in full force and effect thru Monday, March 15th, 1954, or until appropriate action is taken. The Court finds as reasons for renewing restraining order that the same condition exists as existed when the order was granted and that the preliminary injunction could not be heard and passed upon within the original 10 day period.

* * * * * * *

Court then adjourned according to law.

Approved: Allen V. Hundley, Judge.

[fol. 2] Monday, March 15, 1954.

The District Court, civil section, met this day according to law, His Honor Judge Allen V. Hundley presiding. Previous minutes were read and approved.

* * * * * * *

43,739—Arkansas Oak Flooring Company vs. United Mine Workers of America, et al.: This cause coming over from Friday, March 12, 1954, was called. Testimony and evidence adduced. Exceptions to the Jurisdiction and vagueness argued, submitted and over ruled by the Court. Rule taken up and tried. Testimony and evidence adduced. Rule argued, submitted and judgment rendered making the rule absolute as prayed for.

* * * * * * *

Court then adjourned according to law.

Approved: Allen V. Hundley, Judge.

STATE OF LOUISIANA,
Parish of Rapides:

City of Alexandria,
Thursday, March 25, 1954.

The District Court, civil section, met this day according to law, His Honor Judge Allen V. Hundley presiding. Previous minutes were read and approved.

* * * * * * *

43,739—Arkansas Oak Flooring Company vs. United Mine Workers of America. Judgment read and signed. see decree. Written motion on counsel for defendants filed praying for a devolutive appeal. Motion for devolutive appeal granted, returnable to the Honorable Supreme Court of Louisiana, New Orleans, Louisiana, on or before April 16th, 1954, devolutive appeal bond fixed in the sum of $500.00. Case set for trial for June 24, 1954.

Court then adjourned according to law.

Approved: Allen V. Hundley, Judge.

[fol. 3] In the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana

Petition of Arkansas Oak Flooring Company Filed March 2, 1954

To the Honorable, the Judges of the Ninth Judicial District Court, Holding Sessions in and for Rapides Parish, Louisiana:

The petition of Arkansas Oak Flooring Company, a Delaware corporation, authorized to do business in Louisiana; and having its registered office in Rapides Parish, Louisiana; with respect, represents:

1

That United Mine Workers of America, defendant herein, is an unincorporated labor organization, or voluntary association, and should be served herein through James Ledbetter, the only one of its members or officers who is present in Louisiana, or within the jurisdiction of this court.

2

That the other defendants herein are Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, all of whom are residents of Rapides Parish, Louisiana, and James Ledbetter, a non-resident who is temporarily residing in Rapides Parish, Louisiana.

3

Petitioner shows that it is engaged in the business of manufacturing lumber and oak flooring in Rapides Parish, La., where it operates a large sawmill and flooring plant near the City of Alexandria, Louisiana.

4

Petitioner shows that despite the fact that it is not engaged in any labor dispute with its employees, nor with any labor union, the defendant, United Mine Workers of America, along with the other defendants named herein,

did, on March 1, 1954, set up a picket line surrounding petitioner's establishment herein referred to, which picket line is still maintained.

[fol. 4]

5

That such picket line has caused a large number of its employees to refuse to cross the same and report for work, with the result that petitioner's operations have been greatly curtailed, to petitioner's irreparable loss and damage.

6

Petitioner shows that it has no dispute of any kind with respect to the employment, wages, hours, or other working conditions, of any of its employees.

7

That the defendants herein, acting singly and in concert, have, by threats of violence and intimidation, frightened a number of its employees away from their jobs, thereby unlawfully interfering with petitioner's business.

8

In the alternative, and should it be found that petitioner is engaged in a labor dispute with the defendant union, which is denied, then it would be unable to recognize it as a bargaining agent of its employees because the National Labor Relations Board has refused to recognize said defendant union as a qualified labor organization because of the failure of its officers to disavow communist affiliation, as required by the National Labor Relations Act; that picketing, peaceful or otherwise, by such noncomplying union, is an unlawful interference with petitioner's business.

9

Plaintiff avers upon information that the United Mine Workers of America does not represent its employees.

10

Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the

[fol. 5] forcing of petitioner to interfere with the rights of its employees as expressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as a representative of its employees in the absence of their selection of said union as their representative.

11

That the unlawful action of the defendants herein is causing petitioner a monetary loss in excess of $1000.00 per day, which will continue indefinitely unless such unlawful picketing is enjoined; that such damages are irreparable in that it cannot recover said sum from any defendant or other person; that none of them could be made to pay any judgment in damages.

12

Petitioner has no adequate administrative remedy for its protection and no adequate legal remedy at law.

13

That under the circumstances herein set forth petitioner is entitled to the immediate issuance of a temporary restraining order, without notice or hearing, in order to prevent further irreparable injury, loss and damage to petitioner.

14

That in due course a preliminary injunction and, finally, a permanent injunction should issue against the defendants herein, enjoining them from the unlawful picketing and other interference with petitioner's employees.

Wherefore, petitioner prays that on the basis of its petition and annexed affidavits, a temporary restraining order issue herein, upon petitioner furnishing bond as fixed by the court, restraining, prohibiting and enjoining the United Mine Workers of America, its officers, members and employees, and the other defendants herein, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, [fol. 6] Will Cobb and John Doggins, and James Ledbetter, and any and all other persons acting for or on behalf of said defendants, from picketing on, near or about

petitioner's property, or approaches thereto just off Texas Avenue near Alexandria, Louisiana; and likewise restraining said defendants and parties acting for or in concert with them, from violence or threats thereof to induce petitioner's employees to cease their employment relationship with petitioner.

That a rule issue against the defendants, ordering them to show cause why a preliminary injunction should not issue herein, and finally, after due hearing hereof, that a permanent injunction issue herein.

For all costs and for general relief.

Stafford & Pitts, Attorneys for Petitioner.

[fol. 7] [Title omitted]

AFFIDAVIT OF J. G. SMITH AND S. C. GRIFFITH

STATE OF LOUISIANA,
Parish of Rapides, ss:

Before me, the undersigned authority, personally came and appeared J. G. Smith, a resident of Pine Bluff, Arkansas, and S. C. Griffith, a resident of Alexandria, Louisiana, who being sworn, deposed and said:

That they are the President and General Manager, respectively, of the Arkansas Oak Flooring Company, plaintiff herein; that on March 1, 1954, the United Mine Workers of America, acting through its agent, James Ledbetter, and through others, along with Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, have stationed a picket line around the said Arkansas Oak Flooring Company's plant near Alexandria, La., the effect of which was to cause a large number of plaintiff's employees to fail to report to work, thereby greatly curtailing plaintiff's manufacturing operations and causing it a monetary loss of more than $1000.00 per day, which damage is irreparable because of the insolvency or lack of means of the defendants.

That said picket line was set up despite the fact that

plaintiff is not engaged in any labor dispute with any union nor with its employees over wages, hours, working conditions or any other cause; that the defendants herein have, by threats of violence and intimidation, frightened a number of its employees away from their jobs.

[fol. 8] That petitioner has not been requested to recognize nor to negotiate with the defendant union, and that it would be unable to do so even if requested, for the reason that the officers of said union have failed to disavow communist affiliation and that said union has not been recognized as a qualified union by the National Labor Relations Board.

That plaintiff has no adequate administrative or legal remedy to prevent the irreparable loss and damage being caused by such illegal acts of the defendants, and that a temporary restraining order is necessary to prevent such irreparable loss and damage.

That affiants have read the above and foregoing petition and that all the allegations therein contained are true and correct, except such as are on information and belief, and that as to them affiants verily believe them to be true.

J. G. Smith, S. G. Griffith.

Sworn to and subscribed before me, this 2nd day of March, A. D. 1954. Jean Pharis, Notary Public.

[fol. 9] In the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana

Temporary Restraining Order—March 2, 1954

The foregoing petition and annexed affidavit considered, and it appearing from the facts shown therein that before notice can be served and a hearing had on the plaintiff's application for a restraining order and injunction it has and will continue to suffer immediate and irreparable loss and damage, and it appearing that the granting of a temporary restraining order will occasion no damage to defendants.

It is ordered, adjudged and decreed that upon plaintiff furnishing bond with good and solvent surety as required

by law, in the sum of $5,000.00, the defendants, United Mine Workers of America, its officers, members, agents and employees, James Ledbetter, and Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, and all other persons acting for the said defendants, be and they are hereby restrained, prohibited and enjoined from picketing on, about or near the property of plaintiff, known as the Arkansas Oak Flooring Company plant; or the approaches thereto, and from interfering in any manner with the operation of the plaintiff's business by picketing or threatening its employees in an effort to induce them to discontinue their employment with plaintiff.

This temporary restraining order shall expire at the end of ten days from the date hereof unless extended.

It is further ordered that the said defendants show cause in open court at Alexandria, La., on the 12th day of March, 1954 at ten o'clock a.m., why a preliminary injunction in the sum and substance of this restraining order should not issue as prayed for.

It is further ordered that copies of this order, with copies of the plaintiff's petition, be served upon the de-
[fols. 10-11] fendants and upon all persons engaged in the picketing activities enjoined hereunder.

Done and signed at Alexandria, La., on this 2nd day of March, 1954, at 2:00 o'clock P.M.

Allen V. Hundley, Judge.

[fol. 12] [File endorsement omitted]

IN NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

EXCEPTION TO CITATION—Filed March 12, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

Now into Court, through undersigned counsel, comes the United Mine Workers of America, in so far as capable

of doing so, and excepts to the citation herein, as far as it pertains to the United Mine Workers of America, for this, to-wit:

1. That, as shown by paragraph 1 of the petition, this said defendant "is an unincorporated labor organization of voluntary association" and, therefore, has no corporate existence and cannot be impleaded into Court under its group name.

2. That James Ledbetter, upon whom process was served, as the "only one of its members or officers who is present in Louisiana" is not authorized to receive process or citation for the members of said group or stand in judgment for the United Mine Workers of America.

3. That the Court lacks jurisdiction ratione personae of the United Mine Workers of America.

[fol. 13] Wherefore, the United Mine Workers of America pray that this exception be sustained, and as to it, this citation be quashed and that defendant's suit be dismissed and exceptor prays for all costs and for all general and equitable relief.

(S) James I. McCain, Attorney for Exceptor.

Certificate of service (omitted in printing).

[fol. 14] [File endorsement omitted]

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

EXCEPTION TO THE JURISDICTION—Filed March 12, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

Now into this Honorable Court, through undersigned counsel, come all parties made defendant in the above and foregoing matter, except for the purpose of excepting to

the petition herein, based on the following reasons, to-wit:

That the Court has no jurisdiction ratione materiae in this matter because:

1. That under the law of the State of Louisiana the Court has no jurisdiction to issue a preliminary or permanent injunction in the labor dispute alleged in the petition.

2. That the petition alleges an unfair labor practice, growing out of a labor dispute in the field of interstate commerce, which is in the exclusive jurisdiction of the National Labor Relations Board, as provided by the Labor Management Relations Act, Section 160(a).

[fol. 15] Wherefore, defendants pray that this exception be maintained and this suit be dismissed at costs of the plaintiff.

(S.) James I. McCain, Attorney for Exceptors.

Certificate of service (omitted in printing).

[fol. 16] [File endorsement omitted]

IN NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

EXCEPTION OF VAGUENESS—Filed March 12, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

Now into Court, through undersigned counsel, come all parties made defendant in the above and foregoing matter, except ——, for the purpose of excepting to the petition filed herein upon the following basis, to-wit:

That the said petition is fatally vague and uncertain in that the petitioner alleges, as the basis for injunctive relief "that the defendants herein, acting singly and in concert,

have, by threats of violence and intimidation, frightened a number of employees away from their jobs."

That the defendants are entitled to be informed as to who made any threats and to whom the threats were made and when and where the threats were made, and the nature of the alleged threats.

That, in order to properly defend in this matter, the defendants are entitled to this information; otherwise, the defendants will be entirely "in the dark" as to what peti-
[fol. 17] tioner intends to prove in this matter.

Wherefore, exceptors pray that this exception be maintained and that, as to them, this suit be dismissed, and for all general and equitable relief.

(S.) James I. McCain, Attorney for Exceptors.

Certificate of service (omitted in printing).

[fol. 18] [File endorsement omitted]

IN NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

No. 43739

RETURN TO RULE TO SHOW CAUSE—Filed March 12, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

Now into Court, through undersigned counsel, come all parties made defendant in the petition in the above and following matter, except and for to answer and make return to the petition and rule for a preliminary injunction, and reserving all rights under the exceptions previously filed herein, respectfully aver:

Defendants admit the introductory paragraph of the petition.

1. Defendants admit that the United Mine Workers of America is an unincorporated labor organization, but deny

that James Ledbetter is its agent or representative for process or legal service and deny that said voluntary association is within the jurisdiction of this Court.

2. Defendants admit the allegations of paragraph 2 of the petition, but deny that James Ledbetter is temporarily residing in Rapides Parish, Louisiana.

3. Admitted.

[fol. 19] 4. Defendants deny the allegations of paragraph 4 of the petition, except as hereinafter admitted.

5. Defendants deny paragraph 5 of the petition, except as hereinafter admitted.

6. Denied.

7. Denied.

8. The allegations of paragraph 8 of the petition are denied except that defendants admit and aver that there is a bona fide labor dispute existing between the petitioner as employer and the defendants as employees.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

And further answering defendants aver:

15

(a) That there is a bona fide labor dispute between the petitioner as employer and all defendants and other employees of petitioner.

(b) That 182 of petitioner's employees, or approximately 80 percent of said employees have designated District 50, United Mine Workers of America, a separate unincorporated labor organization as its bargaining agent at petitioner's plant.

(c) That petitioner, through its officers, has been so informed and defendants and other employes of petitioner have sought to have said labor organization recognized as the bargaining agent for said employees, and defendants and other of said employees have sought to negotiate with the employer on working conditions and terms, through

said representative, and said petitioner has arbitrary refused to negotiate or meet with its employees.

[fol. 20] (d) That a picket line was set up near petitioner's plant on March 1, 1954 by a large majority of the employees of petitioner's plant when the petitioner arbitrarily refused to negotiate or discuss working conditions with its employees, or recognize the employees bargaining agent.

(e) That said picket line at no time consisted of more than three pickets; that it was peaceful; that there was no threats or violence to anyone at any time in connection with this matter.

16

Defendants further aver also or in the alternative, that this matter involves an unfair labor practice, growing out of a labor dispute in the field of interstate commerce and within the exclusive jurisdiction of the National Labor Relations Board.

17

Defendants aver that the right to strike and picket peacefully, as conducted herein by defendants and other employees of the petitioner, (as an expression of free discussion) is protected by the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 3 of the Constitution of Louisiana.

Wherefore, defendants pray for judgment in their favor denying a preliminary injunction or denying any relief to the petitioner, and that petitioner's suit be discussed at its cost and for all general and equitable relief and all costs.

(S.) James I. McCain, Attorney for defendants,
818 Whitney Bldg., New Orleans, La.

[fols. 21-22] *Duly sworn to by James I. McCain. Jurat omitted in printing.*

[fols. 23-24] [File endorsement omitted]

PLAINTIFF'S EXHIBIT I—Filed March 15, 1954

NATIONAL LABOR RELATIONS BOARD
Fifteenth Region
820 Lowich Bldg., 2026 St. Charles Ave.
New Orleans 13, Louisiana

March 8, 1954.

Mr. John L. Pitts,
Stafford & Pitts,
Suite 710 Guaranty Bank Building,
Alexandria, Louisiana.

Dear Mr. Pitts:

Re: Arkansas Oak Flooring Company, Alexandria, Louisiana (Unlocketed).

This is in answer to your letter of March 4, 1954, regarding the above company, in which you request information as to compliance by the United Mine Workers of America with the filing requirements of the Labor Management Relations Act, commonly referred to as the Taft-Hartley law. This is to advise that the United Mine Workers of America has not complied with the filing requirements of Sections 9 (f) (g) and (g) of the Act and therefore may not use the services of the Board for either representation or unfair labor practice matters. For your convenience, I am enclosing a copy of the Board's Rules and Regulations and a copy of the Act.

Very truly yours, (S.) John F. LeBus, Regional Director.

Enclosure

[fol. 25] DEFENDANT'S EXHIBIT "D-1"

Membership Application Blank Not Dated, Filed in Evidence March 15, 1954

MEMBERSHIP APPLICATION AND CHECKOFF AUTHORIZATION
DISTRICT 50, UNITED MINE WORKERS OF AMERICA

I hereby request and accept membership in District 50, United Mine Workers of America, and authorize it to represent me in my behalf to negotiate and execute any and all agreements pertaining to wages, hours, and conditions of work. This power to act in my behalf expressly revokes and shall supersede all previous authorizations which I may have given to any other person or organization for the purpose of representing me as an employee. The Constitution, Laws, Rules, Policies, Regulations and Edicts of the above Union and all amendments thereto shall be binding upon me. In consideration for services rendered and to be rendered by the above Union, I agree to pay all reasonable amounts of money lawfully required as a condition to obtain and maintain membership in good standing.

My employer, therefore, is hereby authorized to deduct from my wages and turn over to the officer or representative, as designated in the applicable agreement, all such amounts of money above outlined and limited to the amounts provided in the applicable agreement between the above Union and my employer, and this authorization and assignment shall be irrevocable for the term of the applicable contract between the Union and the Company or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is the lesser, until I give written notice to the Company and the Union at least 60 days and not more than —— days before any periodic renewal date of this authorization and assignment of my desire to revoke the same.

[fols. 26-86] DEFENDANTS' EXHIBIT "D-2"

Signed Membership Application Forms, entire group marked "D-2", Not Dated, Filed in evidence March 15, 1954.

MEMBERSHIP APPLICATION AND CHECKOFF AUTHORIZATION
DISTRICT 50, UNITED MINE WORKERS OF AMERICA

I hereby request and accept membership in District 50, United Mine Workers of America, and authorize it to represent me in my behalf to negotiate and execute any and all agreements pertaining to wages, hours, and conditions of work. This power to act in my behalf expressly revokes and shall supersede all previous authorization which I may have given to any other person or organization for the purpose of representing me as an employee. The Constitution, Laws, Rules, Policies, Regulations and Edicts of the above Union and all amendments thereto shall be binding upon me. In consideration for services rendered and to be rendered by the above Union, I agree to pay all reasonable amounts of money lawfully required as a condition to obtain and maintain membership in good standing.

My employer, therefore, is hereby authorized to deduct from my wages and turn over to the officer or representative, as designated in the applicable agreement, all such amounts of money above outlined and limited to the amounts provided in the applicable agreement between the above Union and my employer, and this authorization and assignment shall be irrevocable for the term of the applicable contract between the Union and the Company or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is the lesser, until I give written notice to the Company and the Union at least 60 days and not more than days before any periodic renewal date of this authorization and assignment of my desire to revoke the same.

Signature—JOSEPH STEWART Clock No.
Address—Fenner Street 1208
Employed by
Social Security No. Date

The parties herewith agree and stipulate that counsel for the petitioners introduced in evidence, in addition to the blank card and the card signed by Joseph Stewart, one hundred and seventy-eight additional cards of the same sort signed in each instance by one employee of the respondent.

[fol. 87] [File endorsement omitted]

IN NINTH JUDICIAL DISTRICT COURT, PARISH OF RAPIDES, STATE OF LOUISIANA

No. 43,739

ARKANSAS OAK FLOORING COMPANY

vs.

UNITED MINE WORKERS OF AMERICA, et al.

JUDGMENT ON PRELIMINARY INJUNCTION—March 25, 1954

This cause having come on for trial on the rule for a preliminary injunction, and trial being regularly had, and the court being of the opinion that the plaintiff is entitled to the relief prayed for, because, among other things, it will suffer irreparable loss and damage unless a preliminary injunction is granted, for other reasons orally assigned.

It is therefore, Ordered, Adjudged and Decreed that a preliminary injunction issue herein enjoining and prohibiting the United Mine Workers of America, its officers, members and employees, and the other defendants herein, James Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, and any and all other persons acting for or on behalf of said defendants, from picketing on, near or about plaintiff's property or approaches thereto just off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana; said preliminary injunction to issue upon the plaintiff

furnishing bond with good and solvent surety and conditioned as the law requires, in the sum of $5,000.00.

Judgment rendered in open court on March 15, 1954, and read and signed in open court on this 25th day of March, A.D. 1954.

Allen V. Hundley, Judge.

[fol. 88] In Ninth Judicial District Court for the Parish of Rapides, State of Louisiana

[Title omitted]

No. 43739

Motion For And Order of Appeal—March 25, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

On motion of United Mine Workers of America and all other parties made defendant in the above and foregoing matter, through their attorney, James I. McCain, and on suggesting to the Court that defendants are aggrieved by the judgment on the rule for a preliminary injunction herein rendered on the 15th day of March, 1954 and signed on the 25th day of March, 1954, said judgment being rendered in favor of plaintiff; that the said judgment is contrary to the law and the evidence, and that movers desire to appeal devolutively therefrom to the Supreme Court of the State of Louisiana.

It Is Ordered that a devolutive appeal be granted to the said United Mine Workers of America and all defendants in this matter, returnable to the Supreme Court of the State of Louisiana, on the 16th day of April 1954, upon said parties furnishing bond with good and solvent security in the sum of $500.00.

March 25th, 1954.

Allen V. Hundley, Judge.

[File endorsement omitted.]

[fols. 89-90] Bond on Appeal for $500.00 filed March 25, 1954 omitted in printing.

[fols. 91-92] IN NINTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

TESTIMONY AND NOTE OF EVIDENCE ADDUCED UPON THE TRIAL OF THE EXCEPTION TO CITATION, ON MARCH 12, 1954 AT ALEXANDRIA, LOUISIANA, BEFORE HIS HONOR, ALLEN V. HUNTLEY, JUDGE, PRESIDING—Filed March 27, 1954

APPEARANCES:

Messrs. Stafford & Pitts, by Grove Stafford and John Pitts, Alexandria, Louisiana, Counsel for Plaintiff.

Mr. James I. McCain, New Orleans, Louisiana, Counsel for Defendant.

[fol. 93] By Mr. McCain, Counsel for defendant.

I would like the record to show that at this particular time counsel for the United Mine Workers of America, one of the defendants, tenders and files in the record of this trial its Exception to the Citation in advance of any other pleadings and does not not join with the Exception to the Citation any other pleadings for filing and I request the Court at this time to hear me on the Exception to the Citation in advance of the filing of any other pleadings.

By the Court:

The Court will permit the filing of the Exception along with all other pleadings in the matter. The Court will reserve you the right reserved in the pleadings to have that taken up first and disposed of and then the other matters.

By Mr. McCain:

I will now submit to the Court my argument in support of my Exception to the Citation.

By Mr. Stafford:

The plaintiff objects to taking up any one pleading and suggests that the law requires the defendant to file all pleadings at one time with reservation of rights from one to the other.

By the Court:

The Court will not permit argument on the Exception, reiterating the first exception will be considered and application and determination will be reached thereon.

By Mr. McCain:

Therefore, subject to the order of the Court, we file all our other pleadings, submitting, of course, to the order of the Court, but not waiving any merits or right to present our Exception to the Citation, but filing the other pleadings at this time so that at this particular time I file as my second pleading an Exception to the Jurisdiction which [fol. 94] I ask the Clerk to mark and I file an Exception of Vagueness at this time as my third pleading, and, subject to the ruling of the Court, I file as my fourth pleading my return or answer to the petition and it is understood that the filing of these pleadings contemporaneously does not waive any right of the defendants, by that act, if the defendants should file the individual pleadings in advance of one or the other.

By the Court:

That's the understanding of the Court.

Testimony on Behalf of the Plaintiff

Mr. James Ledbetter called under cross examination, duly sworn, and testified as follows:

Objection by Mr. McCain: I would like at this time to enter a general objection to any examination of this witness for the purpose of showing that he is an agent or representative of the United Mine Workers, for the purpose of showing that citation can be made on him, because the law is well settled that service on anyone in the name of United Mine Workers is not a good service.

By the Court:

Overruled.

Cross-examination.

By Mr. Pitts, Counsel for Plaintiff:

Q. Mr. Ledbetter, where do you live?
A. I live in Oakdale.
Q. You are a resident of Oakdale?
A. I am.
Q. You are a citizen of Louisiana?
A. I am.
Q. How long have you lived in Louisiana?
A. Three years.

[fol. 95] Q. Mr. Ledbetter, I notice in Paragraph 15 of the answer which has been filed by the United Mine Workers in this case that it is contended that the Company's offices have been requested to recognize the United Mine Workers as a bargaining agent, who made that request?

A. I did.

Q. In what capacity did you make that request of the Arkansas Oak Flooring Company?

A. Well, I'm a representative for District 50 of the United Mine Workers. I did that in the capacity that the majority of the employees had signed cards with our Union.

Q. Had these men whom you purported to represent paid any dues to your Union?

A. They have not.

Q. If the Union would be recognized, they would pay dues I suspect?

A. If we get a contract with the Company—yes.

Q. Then they would pay dues to the United Mine Workers?

A. Yes, District 50, United Mine Workers.

Q. Now, this demand that you made for recognition was made solely by you was it not? I mean by that, you were the only representative of the United Mine Workers who claims to have made any demand on the Company, is that right?

A. Well, I wouldn't put it a demand. I'm the only representative of the Mine Workers Union that I know of that contacted the Company for recognition, if that's what you mean.

By Mr. Pitts:

That's all.

Direct examination.

By Mr. McCain:

Counsel for Defendants.

Q. What Company official did you contact, Mr. Ledbetter?
A. Mr. George Fowler.
[fol. 96] Q. I believe he's the Assistant Manager of the plant here?
A. That is my information.
Q. And how many, at that time that you contacted him, you had signed how many of the employees of the plant, I am referring to the Arkansas Oak Flooring Company?

Objection by Mr. Pitts: I would like to suggest at this time that Mr. Ledbetter is his witness and he doesn't have a right to call him under cross examination.

By the Court:

If you make a statement and put it in the record that you're submitting him as your own witness, otherwise it will be as cross.

By Mr. McCain.

Subject to the ruling of the Court I will ask that the witness answer the question.

By the Witness:

The question I think was "How many had signed cards with our union?" At that time we had 174 as my memory serves me. That's correct.
Q. Those were cards authorizing the Union to represent those employees with the employer for recognition and collective bargaining?
A. Right.

By Mr. McCain:

That's all we have.

Re-cross examination.

By Mr. Pitts:

Q. Mr. Ledbetter, does the United Mine Workers of America have any other agent in Rapides Parish besides you?

A. Well, sir, I will have to answer that this way. We're —our original office is in Baton Rouge and we are assigned out in areas where we have some work, local union work to do and I'm assigned up in this area. Does that answer your question?

Q. You're assigned to this area?

A. Temporarily, yes.

[fol. 97] Q. And you're the only assigned to this area at the present time?

A. Yes, as far as I know.

By Mr. Pitts:

That's all.

By Mr. McCain:

That's all.

Witness excused.

[fol. 98] Stenographer's Certificate to foregoing transcript omitted in printing.

[fols. 99-100] IN NINTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

TESTIMONY AND NOTE OF EVIDENCE ADDUCED UPON THE TRIAL OF THE EXCEPTION TO JURISDICTION, ON MARCH 12 AND 15, 1954, AT ALEXANDRIA, LOUISIANA, BEFORE HIS HONOR, ALLEN V. HUNDLEY, JUDGE, PRESIDING.—Filed March 27, 1954.

* * * * * * *

[fol. 101] Testimony on Behalf of the Defendants

Mr. J. G. SMITH called under cross examination, duly sworn, and testified as follows:

Cross-examination.

Mr. McCain:

Q. Mr. Smith, I believe you're the President of Arkansas Oak Flooring Company?

A. That is correct.

Q. That's correct, sir?

A. It is.

Q. I believe your corporation is incorporated under the laws of the State of Delaware?

A. That is correct.

Q. You own plants in other states, sir?

A. Here in Louisiana, yes.

Q. Do you own one in Arkansas?

A. Yes.

Q. That is located at (interrupted)

A. Pine Bluff, Pine Bluff, Arkansas.

Q. That's a plant similar to the one here, sir?

A. Very much.

Q. How long have you been with the Arkansas Oak Flooring Company, sir?

A. Twenty-eight years.

Q. It has, of course, been in corporate existence for that time?

A. Yes.

Q. Do you know how long it has been in existence?

A. Well, the Arkansas Oak Flooring Company was originally incorporated in 1915, but there's been some change. The present corporation of the Arkansas Oak Flooring Company was in 1933.

[fol. 102] Q. Where are the, your main offices?

A. In Pine Bluff.

Q. You have an office in Alexandria?

A. We do.

Q. You maintain offices in what other places?

A. We have some buying offices and yards in Texas.

Q. That's, those are offices to buy lumber which is shipped here?

A. Some of it is shipped here. Some Pine Bluff.

Q. Those offices—those are located where?

A. One in Rusk, Texas, Jefferson and Dayton.

Q. Those are all towns or cities in Texas?

A. Correct.

Q. And I assume that at those offices you maintain representatives for Arkansas Oak Flooring to buy lumber?

A. That's correct.

Q. Do you maintain any buying offices in any other states?

A. No. Except Arkansas.

Q. How many do you maintain in Arkansas?

A. We have two other than the Pine Bluff location.

Q. And they are located where?

A. Hoxie and Batesville.

Q. Now, do you maintain any selling offices?

A. No. No selling offices. All the selling is handled at Pine Bluff.

Q. The central office is at Pine Bluff?

A. Yes. That's right. We have salesmen on the road. Salesmen who operate out of the home office.

Q. Your offices in Louisiana and Texas are regulated more or less from the central office in Pine Bluff?

A. That's correct.

[fol. 103] Q. Now, the salesmen, of course, are salesmen to sell lumber is that it?

A. Sell our products, yes.

Q. Your product is what?

A. Oak flooring primarily.

Q. Do you sell anything else?

A. Some what we call miscellaneous items I could mention.

Q. All lumber, sir?

A. All products.

Q. The salesmen that represent your company travel in what states?

A. Well, they travel practically all the states.

Q. That's all forty-eight?

A. Well, they may not make it in all of them but we try to sell in all states.

Q. Well you would say that your salesmen go in at least forty of the states of the United States?

A. At some time or other, yes—this year or next year.

Q. That, of course, selling program is being maintained at the present time?

A. That's right.

Q. At your Alexandria plant you, I believe, convert rough oak lumber into oak flooring?

A. That's correct.

Q. The rough lumber is obtained where?

A. All over this state and part of Texas. I say all over this state—there are a number of points, but throughout this state and part of Texas.

Q. In other words, your buyers in Texas buy lumber there that is shipped to your local plant?

A. Portions of it.

[fol. 104] Q. Is any lumber shipped here from Arkansas?

A. I don't think we have any shipments from Arkansas come in here now. I suspect in years gone by there may have been some.

Q. Can you give us an approximate figure on how much of this lumber that is used in your Alexandria plant comes from those (interrupted)

A. No, I couldn't without some figures. I'm not prepared to give any percentage on it.

Q. Would you say it's a half?

A. I'm not prepared. I don't have any idea and I don't want to make a guess.

Q. But the lumber that comes to Alexandria from Texas is bought through your four buying offices in Texas?

A. Well, I think I only mentioned three.

Q. Well, I'm sorry, three then.

A. Well, there may be lumber that comes from Texas that originates from other points. We don't restrict ourselves to those buying offices. If someone has lumber and we need it; we buy it.

Q. Your lumber comes to your Alexandria plant from Texas by what means of transportation?

A. Primarily by rail.

Q. Any by trucks?

A. Yes. There has been some by trucks, yes.

Q. And your finished products (interrupted)

Objection by Mr. Stafford: All of this is costing everybody time and money. I don't want to interfere with counsel's idea of establishing his case but all of this leads to but one thing—that this company is engaged in interstate commerce. We are engaged in interstate commerce I offered to admit that. We make no legal admission except the factual situation that this company is engaged in interstate commerce.

[fol. 105] By the Court:

That is irrelevant but let him go ahead and ask the question.

By Mr. McCain:

The finished product, Mr. Smith, is sent to approximately how many states from Alexandria?

A. I think the record has already shown there—some forty. That varies in different years. We would like to sell in every state.

Q. But you are at the present time selling in a number of states?

A. In a number of states, yes.

Witness excused.

[fol. 106] Monday, March 15, 1954

CORNELIUS WESLEY BROWN called under direct examination, duly sworn, and testified as follows:

Direct examination.

By Mr. McCain:

Q. What is your name?
A. Cornelius Wesley Brown.
Q. Where do you live?
A. 1014 Fulton Street, Alexandria, Louisiana.
Q. Are you presently employed?
A. (Witness doesn't answer.)
Q. Are you presently working today?
A. Yes. Not today.
Q. When is the last day you worked?
A. Friday, the 27th.
Q. Is that the Friday before the men went on strike?
A. Right.
Q. And the men went on strike on what day?
A. First of March.
Q. That is this year?
A. That's right.
Q. And for the record, what day of the week was that—Monday, Tuesday, Wednesday?
A. Monday.
Q. Now, will you state whether or not you went out on strike on that day?
A. (Witness does not answer.)
Q. Did you? Did you?
A. Yes.
Q. Of course. Where were you working before Monday, March 1, 1954?
A. Arkansas Oak Flooring.
[fol. 107] Q. And you had been working for approximately how long?
A. Eight months.
Q. That is the Arkansas Oak Flooring Plant here in Alexandria?
A. Right.
Q. Now, I call to your attention that this suit has been

filed against the following named men: Richard Vidrine, Louis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mac Kelly, Eddie Goff, Will Cobb and John Doggins. Will you state whether or not you know those men?

A. I know a few of them in person. I know the rest of them when I see them, when they tell me their name is so and so I know them when I see them.

Q. Where were those men working, to your knowledge, prior to March 1, 1954?

A. Arkansas Oak Flooring Company here in Alexandria, Louisiana.

Q. Will you state whether or not these men went out on strike?

A. They did.

Q. Do you know whether or not picket lines were put up around the Arkansas Oak Flooring place on March 1st?

A. Yes, I do.

Q. Who were the pickets?

A. I, myself, for one, Eddie Goff, Leonard Fuller was one, Jesse Lair,

Q. Were they all employees at the Arkansas Oak Flooring Company?

A. Yes, they was.

Q. The picket line was maintained how long?

A. Until March 2nd.

Q. 1954?

A. 1954.

Q. And where was the picket line put up?

[fol. 108] A. Two on Texas Avenue, and one, I don't know the name of the street, but it's on the side next to the railroad track.

Q. And they were in front or around what plant?

A. Arkansas Oak Flooring.

Q. And what was on the picket signs?

A. One "This plant is on strike." The other sign was "We want recognition—District 50 UWA".

Q. Will you state whether or not the men at, or the employees at the Arkansas Oak Flooring Company had organized into any union group?

A. Will you mind repeating that?

Q. Will you state whether or not the men or employees

at the Arkansas Oak Flooring Company had organized into any union group?

A. Yes, they had.

Q. And what was that group?

A. The United Mine Workers of America.

Q. And what representative, if any, assisted in the organization?

A. The representative's name is James L. Ledbetter.

Q. And he represented District 50, United Mine Workers of America?

A. That's right.

Q. Did you hold any, did you hold any office in that particular union group?

A. President.

Q. Who elected you?

A. The employees.

Q. Were there any other officers?

A. Yes, there was some.

Q. Did you have stewards elected?

A. We had stewards elected.

Q. Who selected them?

A. The members of the union.

[fol. 109] Q. Why did the union of which you were President go out on strike?

A. We went out on strike for recognition.

Q. Recognition of what group?

A. United Mine Workers of America, District 50.

Q. Of which you were President?

A. Right.

Q. Did you have a meeting—state whether or not you had a meeting to determine whether you would go out on strike?

A. Yes, we did.

Q. When was that meeting held, Cornelius?

A. We had a meeting Tuesday the 23rd.

Q. Of what month?

A. February.

Q. For what purpose?

A. We had a meeting for the purpose of asking for recognition.

Q. Did you ask for recognition?

(Stenographer's note: The answer given by the witness was objected to and ordered stricken by the Court).

Q. What do you know of your own knowledge, Cornelius, don't repeat what anybody told you, what do you know about any demand for recognition of your Union?

A. (Witness's answer objected to and ordered stricken by the Court).

Q. You were present at the time the demand was made?

A. (Witness's answer objected to and ordered stricken by the Court).

Objection by Mr. Pitts; I ask that all testimony about a demand for recognition either be stricken or be considered as hearsay. If the demand was made, the proper way to establish that is by the man who made it.

By the Court:

Let the testimony in respect to his knowledge of the demand or statement to the effect that a demand was made be stricken. Motion to strike sustained.

[fol. 110] By Mr. McCain:

Q. What was this day, Brown, when you went with Mr. Ledbetter to the Plant to see Mr. Fowler?

A. Wednesday, the 24th of February, 1954.

Q. Who is Mr. Fowler?

A. He is the Assistant Superintendent of the Plant here in Alexandria.

Q. And what, if anything, did you do in the presence of Mr. Fowler, as far as Mr. Ledbetter is concerned? Did you point him out or what?

A. I pointed him out when he was driving up in his car.

Q. Did you hear any of the conversation that followed between Mr. Ledbetter and Mr. Fowler?

A. No. I had to be back in the Plant. It was time for me to be in the plant at my job.

Q. At this particular time how many men had signed up with the Union, District 50, that is—employees at the Arkansas Oak Flooring Company?

A. 174.

Q. And they had signed up to have this Union represent them at the Plant?

A. That's right.

Cross-examination.

By Mr. Stafford:

Q. Tell us again what was on that picket sign that you were carrying around?

A. The first one was "This Plant is on Strike."

Q. Now, what was on the other one?

A. "We want Recognition, District 50 UMWA."

Q. Am I correct in saying that the purpose of the strike was to compel Arkansas Oak Flooring Company to recognize this Union?

A. Repeat that.

Q. Am I correct in saying that the purpose of the strike was to compel the Arkansas Oak Flooring Company to recognize (interrupted).

A. Not compel.

[fol. 111] Q. To induce them then?

A. We was asking them to recognize us.

Q. And what you wanted and what you hoped to get by this strike was to have Arkansas Oak Flooring to recognize you as the bargaining agent?

A. Repeat that.

Q. Then was the purpose of the picket line to have the Arkansas Oak Flooring Company recognize this Union as the bargaining agent of the men?

A. That was the purpose.

Q. And by the picket line you hoped to induce the men not to cross the line and go to work while you were on strike, did you not?

A. By the picket line—we wanted recognition and the men who signed up automatically they wouldn't cross the picket line.

Q. So you hoped to keep the men who had been working for Arkansas Oak Flooring Company to stay away from that shop by this picket line?

A. We had 174.

By Mr. Pitts:

You're smart enough to understand my question and answer it.

By Mr. McCain:

As attorney for, counsel for all defendants and the Union, I will admit that the purpose of the picket line, just like all picket lines, is to keep the people, the public at large, not to cross the picket line.

By the Court:

Answer counsel's question if you can.

By Mr. Pitts:

Isn't it a fact, Brown, that by establishing this picket line, the Union hoped to keep the men from going back to work?

A. I don't understand that quite well.

Q. When you put that picket line at the entrance of the plant, didn't you, as President of the Union, hope to keep the men from crossing that picket line to get to their work?

A. We did.

[fol. 112] Q. Now Brown, no petition has been filed by this Union with the Labor Board to force Arkansas Oak Flooring to recognize that Union, has there?

A. Would you mind repeating that again?

Q. Has this Union filed any petition or application with the Labor Board to have it recognized as the bargaining agent of the employees of Arkansas Oak Flooring Company?

A. None to my knowledge.

Q. Do you know why not? Don't you know, as a matter of fact, that this Union has not complied with the Federal Law and cannot use the services of the Labor Board?

By Mr. McCain:

I submit that the best evidence of whether or not the Union has complied, the United Mine Workers, with the requirements of the Employers Relation Act of 1947 are the records of the Labor Board Regional Director, District 150, in the City of New Orleans and to save the time of the Court I will admit that the United Mine Workers of America, District 50 has not complied with those requisites of the Employment Act; that is, the former Taft-Hartley

Act, authorizing the United Mine Workers to use the facilities of the National Labor Relations Board.

By the Court: Overruled.

(Question read to witness).

A. Yes.

Q. Brown, who has directed this strike and the arranging of the picket line and things of that type. Who has been in charge of that?

A. Myself and the representative.

Q. By representative you mean Mr. Ledbetter, the gentleman that testified last week?

A. Right.

Q. Brown, do you know the name of the Manager of the Arkansas Oak Flooring Company?

[fol. 113] A. The Manager?

Q. Yes.

A. J. G. Smith.

Q. He is the President in Little Rock. Do you know the man who manages the mill here in Alexandria?

A. S. C. Griffith.

Q. That's all.

By Mr. Pitts:

The plaintiff, Arkansas Oak Flooring Company, offers and asks to be filed in evidence a letter from the National Labor Relations Board which is marked Plaintiff's Exhibit No. 1.

By Mr. McCain:

I have no objection to admission of the letter. My admission is that if Mr. Lebuse were present in court he would testify as to the information as contained in this letter.

By the Court:

Offering ordered.

Offering: Plaintiff's Exhibit No. 1 filed in evidence.

Witness excused.

[fol. 114] Cornelius Wesley Brown, recalled by Mr. Stafford, counsel for plaintiff, and having been previously sworn, testified as follows:

Re-cross-examination.

By Mr. Stafford:

Q. Brown, at the time you and Mr. Ledbetter planned to see Mr. George Fowler, you knew that Mr. Griffith was out of Town didn't you?

A. Right.

Q. That's all.

Witness excused.

[fol. 115] Stenographer's Certificate to foregoing transcript omitted in printing.

[fols. 116-117] In Ninth Judicial District Court in and for the Parish of Rapides, State of Louisiana

[Title omitted]

Testimony and Note of Evidence Adduced Upon the Trial of the Merits, on March 15, 1954, at Alexandria, Louisiana, Before His Honor, Allen V. Hundley, Judge Presiding—Filed April 3, 1954

[fol. 118] Stipulation

Such evidence as heretofore introduced on the trial of exceptions filed will be received in evidence on the main issue.

Testimony on Behalf of the Plaintiff

Mr. S. C. Griffith called under direct examination, duly sworn, and testified as follows:

By Mr. Pitts: Counsel for Plaintiff

Q. You are Mr. C. S. Griffith?

A. Right.

Q. Where do you live?

A. In Alexandria.

Q. What is your connection with the plaintiff, Arkansas Oak Manufacturing Company?

A. Manager of the Alexandria plant.

Q. Does this company have another plant?

A. They do.

Q. Where is it located?

A. In Pine Bluff, Arkansas.

Q. Who is the President and Chief Executive Officer?

A. Mr. J. G. Smith.

Q. Where does he maintain his office?

A. In Pine Bluff.

Q. That's where the company's other plant is located?

A. That is our headquarters—in Pine Bluff.

Q. Mr. Griffith, just prior to the time this picket line was established on Monday, March 1st, how many employees did you normally have at this mill here in Alexandria?

A. 125 exclusive of officers, inspectors and foremen.

Q. You mean 125 or 225?

[fol. 119] A. 225.

Q. Now after this picket line was established on Monday, March 2, how many employees did you have report the next day or March 2?

A. Seventy-five.

Q. Did I say established on March 1 or March 2? It was established on March 1 then you had only seventy-five on March 2, which was the next day after the picket line was established?

A. That's right.

Q. Now, how many employees did you have report to work on, say, Thursday of last week after the picket line had been removed—Thursday, March 4?

A. I don't know the exact number on Thursday but I can give the exact number on Friday.

Q. Well, how many did you have Friday, March 5?

A. 186.

Q. Now, when your employees were reduced to seventy-five right after the picket line was established, Mr. Griffith, what effect did that have on your operations?

A. Well, it reduced our production about seventy-five per cent.

Q. How many complete flooring units do you operate in the mill?

A. Four.

Q. Now, when you had only seventy-five employees, how many units were you able to operate?

A. One only.

Q. Now, on Friday of last week which was March 5, and you say you had 186 employees, how many units were you able to operate?

A. We were operating two at full time and two on part time. Very limited production on the other two.

Q. Now, how many employees do you have today, which is March 15?

A. 175.

[fol. 120] Q. Is Monday ordinarily different from any other day?

A. We seldom have a full crew on Monday or Friday.

Q. Now Mr. Griffith, prior to the establishment of this picket line around the Alexandria Plant, did any representative of the United Mine Workers ever make request of you for recognition?

Objection by Mr. McCain: Before the witness answers I would like to enter this objection, that if counsel is attempting to show that the Union gave no notice of an intended strike, made no demand for recognition and; therefore, the strike is illegal or improper; for that reason I object to any evidence along that line for the reason that it is not pleaded as a basis for the illegality of the strike or peaceful picketing.

By the Court:

Overruled.

By Mr. McCain:

The objection goes to all evidence along this line.

By the Court:

It is so ordered.

By Mr. Pitts:

Do you recall the question, Mr. Griffith? I asked you whether prior to the establishment of this picket line any

representative of the United Mine Workers ever made the request of you for recognition of this Union?

A. They had not.

Q. Mr. Griffith, at any time, that is before the establishment of this picket-line, did you to your knowledge have any dispute of any kind with any of your employees over wages, hours or other working conditions?

A. I had not.

Q. Mr. Griffith, are you more or less personally acquainted with all of the defendants in this suit who are your employees?

A. Yes, sir.

Q. You know them mostly by sight?

A. Yes, sir.

Q. Are they all more or less day laborers, Mr. Griffith?

A. All of them are day laborers.

[fol. 121] Q. Any of them persons of means of property?

A. I wouldn't think so. I don't know.

Q. You know any of them that has any means?

A. I don't know any of them, no, sir.

Q. Who is Mr. George Fowler, Mr. Griffith?

A. He is in charge, Assistant Manager in charge of production at our plant.

Q. What are his duties in the mill?

A. To keep the plant running and see that the flooring is made right and keep up production.

Q. You mean he actually operates out in the mill itself?

A. That's right.

Q. Is the company office, the clerical office, removed from the manufacturing portion of the mill?

A. Yes, sir.

Q. Is your office in that separate building?

A. Yes, sir.

Q. Does Mr. Fowler have anything to do with fixing the wages or other working conditions of the employees?

A. Our wages, hours and working conditions, in fact all the policies, are made in the Pine Bluff office.

Q. That's where Mr. Smith, the President, is located?

A. That's right.

Q. Your witness, Mr. McCain.

Cross-examination.

By Mr. McCain: Attorney for Defendants

Q. Mr. Griffith, you said you were the Manager of the Louisiana plant, sir?

A. Yes, sir.

Q. When you're absent from the plant, who is in charge?

A. Mr. Fowler, as Production Manager.

[fol. 122] Q. In other words, he's next in line, so to speak, in the Plant?

A. That's right, yes, sir.

Q. Were you in Alexandria on Tuesday and Wednesday and Thursday before the strike?

A. No, sir.

Q. Where were you, sir?

A. In Texas.

Q. And during those days Mr. Fowler was in charge of the Plant?

A. That's right, yes, sir.

Q. Now you stated that on March 1st, the day the picket line was first put up, you only had seventy-five of your two hundred twenty-five employees?

A. That's right, yes, sir.

Q. Then, I conclude from that that one hundred and fifty were out?

A. That's right.

Q. Now, when you figure your employees at two hundred twenty-five, do you include only the plant employees?

A. That does not include the office workers, the lumber inspector and the foremen.

Q. I see, sir. Now, I think you stated this walk-out or absence from the Plant affected your production at first seventy-five per cent?

A. That's right.

Q. That affected your shipping department I guess?

A. Yes, sir.

Q. And your receiving department?

A. Yes, sir. They were all affected.

Q. In other words, every unit in the Plant was affected?

A. Yes, sir.

Q. That did affect your shipments from your Plant during those days?

A. We had some shipments from the plant those days.

[fol. 123] Q. But not as much as if you had had a full Plant?

A. That's right, yes, sir.

Q. You said you were able to operate only one unit during those first two days?

A. That's right.

Q. This effect on your production affected some of your shipments out of the State, I assume?

A. Out of the State?

Q. Yes, sir.

A. Well, any of our shipments may be out of the State.

Q. Well, the effect on your business—it did affect your deliveries of your finished product?

A. That's right, yes, sir.

Q. And it affected your deliveries that you put on the railways to go outside the State?

A. That's right, yes sir.

Q. That continued how long, sir?

A. We're not in full production yet.

Q. So that up to the present time your entire production is still being affected?

A. That's right, yes, sir.

Q. And your entire shipments are still being affected?

A. Yes, sir.

Q. Those are shipments both within and without the State?

A. That's right.

Q. I call to your attention the petition, the original petition of the Arkansas Oak & Flooring Company, apparently signed by S. C. Griffith and ask if that's your signature?

A. Yes, sir.

Q. I'm reading, Mr. Griffith, from Paragraph 5 of your petition:

[fol. 124] "That such picket line has caused a large number of its employees to refuse to cross the same and to report for work with the result that the petitioner's operations have been greatly curtailed." Could you be a little more specific about how your operations have been curtailed?

A. We didn't have enough men to operate on the machine or unload all the lumber or load out all the flooring.

Q. As Manager of the Plant here, would you be willing at this time to submit this matter to an election by a proper or impartial party, to determine whether United Mine Workers represent a majority of your employees?

Objection by Mr. Pitts: That isn't a question or issue before the Court at this time. We are here strictly to determine whether we are entitled to an injunction.

By Mr. McCain:

For the record I would like to say that counsel have alleged and the employer has alleged in his petition that the United Mine Workers does not represent a majority of the employees and my purpose is to show that the employer is unwilling to submit this matter to an election if the United Mine Workers represented one hundred per cent of the workers.

By the Court:

Objection sustained.

By Mr. McCain:

Mr. Griffith, Do you use any company owned trucks in connection with the Louisiana Plant for the picking up of lumber and delivering lumber?

A. No, sir.

Q. Do you know what approximately, what portion of your production or deliveries is made outside the State of Louisiana?

A. I don't exactly know.

Q. Could you give me an approximate figure?

A. I'd say twenty per cent.

Q. And eighty per cent of your entire production is sold in Louisiana?

A. No. I thought you said rough material bought out of Louisiana.

Q. Your rough material is bought outside this State and within the State of Louisiana?

[fol. 125] A. That's right.

Q. From your answer I assume that twenty per cent of your rough material is bought outside the State and eighty per cent within the State of Louisiana?

A. I wouldn't give you figures as being accurate but as near as I recall it's in that neighborhood.

Q. You gave me the approximate figure. How much of your product is delivered outside the State after the finished product?

A. Approximately ninety per cent.

Q. Is delivered outside the State?

A. Yes, sir.

Q. Is there a union at the Plant now?

A. No, sir.

Q. Was there one on March 1, 1954?

A. No, sir.

Q. How long has there been since there's been a union there?

A. Approximately four years.

Q. That's all I have.

Witness excused.

[fol. 126] Mr. J. G. Smith called under direct examination, duly sworn, and testified as follows:

By Mr. Pitts: Counsel for plaintiff.

Q. Mr. Smith, you live in Pine Bluff?

A. In Pine Bluff.

Q. What is your connection with the Arkansas Oak Flooring Company?

A. I am President.

Q. Are you also the Chief Executive Officer of the Company, Mr. Smith?

A. I am.

Q. Does the Company maintain a Plant where you're located in Pine Bluff?

A. They do.

Q. Mr. Smith, prior to March 1st, when this picket line was established, did any representative of the United Mine Workers ever at any time call on you and demand recognition of this Union?

By Mr. McCain: I repeat the objection made before on the other witness.

By the Court: Overruled.

A. No. No one called on me. I had no communication of any kind.

Q. Mr. Smith, prior to this picket line being established, did you, to your knowledge, have any dispute of any kind with your Alexandria employees over wages, hours or other working conditions?

A. To my knowledge no dispute of any kind existed.

Q. Did you come down here when the strike was called, Mr. Smith?

A. Yes I did. When I was notified I came immediately.

Q. I'll ask you what effect the picket line and the consequent reduction of your production has cost the Plant from the time of the establishment of the picket line, say to the beginning of this trial on last Friday?

Objection by Mr. McCain: I object unless the witness can show the basis upon which he makes his statement. I assume he is going to give an opinion or merely an estimate.

By the Court: Sustained.

[fol. 127] Q. Mr. Smith, do you know whether the Company has sustained any pecuniary loss because of this strike?

A. Yes, they very definitely have.

Q. Why? Just tell why?

A. In a Plant the size of ours, we have considerable overhead expense. That goes on whether we're running or whether we're not running and naturally when we're down and we have no revenue coming in that expense is quite terrific. I would roughly estimate that this has cost us in this length of time in excess of $5,000.00.

Q. Are you able to fix it exactly, Mr. Smith?

A. No. I couldn't fix it exactly unless I could sit down and compute it. I'm of the opinion it's considerably more than that.

Q. You put that as a minimum figure?

A. As a minimum.

Q. Are you familiar enough with the operations of the mill to make that approximate estimate?

A. I have had the experience of doing all of the bookkeeping and general auditing work and I've been through the mill from the bottom to the top and I think that I'm

qualified to make a minimum estimate of what this thing has cost us.

Q. That's all.

Cross-examination.

By Mr. McCain, Counsel for Defendants:

Q. Mr. Smith, Mr. Griffith I believe said that, gave certain figures as *as* to the number of employees at work the last week of February 1954 and the number that reported for work on March 1, 1954, the first day of the strike. He stated that 150 employees failed to show up that day. Are you familiar with those figures.

A. Yes, I am.

Q. Now, he stated that on Friday, March 5, that there were 186 employees at the plant, and at the present day you only have 175. Can you give us any figure as to the [fol. 128] original 150 that walked out, how many came back?

A. Yes, I believe I can now, if you'll let me think a minute. Of the 150 that, refer to the note here I might have it. I asked that same question at the office this morning and I had a memorandum of it but I fail to have it with me.

Q. Well, if you want to get the information from Mr. Griffith, I have no objection.

A. Your question was how ~~many of the~~ 150 that returned were (interrupted)——

Q. The original 150.

A. Originally were out?

Q. Yes, sir—of the local employees.

A. I thought I had that but I can give it to you from memory and I think I'm probably correct. I think, the best I can remember from the figure that was given me this morning was all of them but thirty. That's from memory as they gave them to me this morning.

Q. Well, you did bring in some men I think from Pine Bluff for the local plant, didn't you?

A. Two men, yes.

Q. Is that all you brought in?

A. Yes, sir. Two men.

Q. Well, you went from 75 to 186 the first week?

A. That's correct.

Q. That's a difference of 111. Now only two of that increase were people from out of the—did not work (interrupted)——.

A. One was here prior to the strike which would make three total but he's returned to Pine Bluff. There was one that came down about a week before the strike.

Q. I see. That's all, sir.

Witness excused.

By Mr. Pitts: Plaintiff rests, Your Honor.

[fol. 128] Testimony on behalf of the Defendants.

James L. Ledbetter called under direct examination, duly sworn, and testified as follows:

By Mr. McCain, Counsel for Defendants:

Q. Mr. Ledbetter, you have previously identified yourself in this case as what, sir?

A. James Ledbetter.

Q. And you are, what is your business?

A. I'm a representative of District 50, United Mine Workers.

Q. Do you represent the United Mine Workers or District 50?

A. District 50.

Q. What is the difference between District 50 United Mine Workers and United Mine Workers?

A. Well, District 50 is a District in the United Mine Workers of America.

Q. Is United Mine Workers of America the General Federation or International Union?

A. That's right.

Q. Now, you have been with District 50 how long, Mr. Ledbetter?

A. A little over three years.

Q. And you have worked for District 50 in what capacity?

A. As a representative.

Q. How long have you been working in that capacity in Louisiana?

A. Three years.

Q. And your home is where, sir?

A. Oakdale.

Q. And you have worked in other plants in Louisiana in behalf of United Mine Workers?

A. I have.

Q. You've organized other plants?

A. I have.

[fol. 130] Q. To your knowledge, District 50 has contracts with other plants in the State of Louisiana.

A. I do.

Q. Can you name some of them, to your own knowledge?

A. You mean some of our local unions?

Q. Yes.

Objection by Mr. Pitts: That's objected to, Your Honor, as irrelevant. I can't see that it has anything to do with this law suit. He might name all of them in the United States.

By the Court:

Sustained.

By Mr. McCain:

I asked this witness, and I'll repeat the question if I may.

By the Court:

Go ahead.

By Mr. McCain:

To your personal knowledge at what plants in the State of Louisiana, at the present time is United Mine Workers the bargaining agent for the employees? Now don't answer—let the Court rule.

By Mr. Stafford:

And we make the same objection, if the Court pleases, as we urged before.

By the Court:

Sustained.

By Mr. McCain:

Mr. Ledbetter, to your knowledge, at the present time, how many employees does United Mine Workers represent in the entire country?

Objection by Mr. Stafford: That's objected to as irrelevant and immaterial, if the Court pleases.

By the Court:

Sustained.

By Mr. McCain:

All right, one more along that line.

By the Court:

Go ahead.

By Mr. Stafford:

May I just make my objection general, if the Court pleases.

By the Court:

Let the objection be made general. Go ahead.

By Mr. McCain:

How many local unions are there in District 50?

By Mr. Stafford:

Objected to.

[fol. 131] Q. When did you first come into Alexandria for the purpose of contacting the plant of the Arkansas Oak Flooring?

A. Well, I can't give you the exact date on that. I would have to check my records to know, but approximately, I could maybe give you something approximately on it. It

must have been along sometime in November, October or November, somewheres along in there.

Q. What year, sir?

A. 1953.

Q. In other words, you mean last October or last November?

A. Right.

Q. And what did you do after you came here for that purpose? What did you do toward contacting or inquiring relative to the plant of the Arkansas Oak Flooring Company in Alexandria, Louisiana?

A. Well, if I may, I'll just start.

Q. That's what I want you to do. Tell the story.

A. I came in here and made contacts with different employees that's working for the Arkansas Oak Flooring so I found interest enough to convince (interrupted).

Objection by Mr. Stafford: If the Court pleases, we're not interested in this man's opinion. I think that if this is pertinent testimony at all, which I very seriously doubt, I think the factual situation alone would be evidence. That he contacted the men and signed them up. I wasn't going to object to that but I think the by-play, that he found interest enough to convince him, that's not a factual situation and we're here strictly to hear facts from a witness, not opinions, not ideas and anything else.

By Mr. McCain:

Mr. Stafford, if you hadn't made that objection we would have been through a long time ago.

By Mr. Stafford:

Well, maybe so, maybe not, but I still make my objection that it's illegal testimony.

By the Court:

Sustained.

By Mr. McCain:

[fol. 132] Your Honor, I certainly have a right to show that they organized locally a union and that's just what I'm trying to do—to show how they organized the local union.

There is a contention here that this is not a union dispute and I am merely trying to show very briefly and I think, I submit, very pertinently to the case that the plant was organized in a legal, normal accepted fashion. Now, that's what I'm trying to get out of this witness and will go right into it very quickly and very briefly, if you will permit.

By the Court:

I don't think there's objection to your putting into the record the fact that the employees were organized. Now, the details into which the organizer went were irrelevant. Go ahead.

By Mr. McCain:

Did you organize the plant at the Arkansas Oak Flooring Company?

By the Witness:

Not the plant. I organized the employees—could come in the bargaining union.

Q. And, very briefly, how did you do that?

By Mr. Stafford:

Now that's objected to, if the Court pleases. We've got the fact before us and there's no denial of the fact. But his methods—I don't think we're concerned with it at all. He might have done it by wooing them, by any of fifty methods. Now we're simply not concerned with the method. The results have already been stated and I think that's proper evidence.

By Mr. McCain:

I submit it is most pertinent, if the Court pleases, to prove that stewarts were selected, that the president was selected, that the entire set-up for a local union was conducted in this particular case and that's what I'm trying to prove.

By the Court:

I was just going to offer the suggestion. The court, in its ruling heretofore made a statement that such matters as were pertinent would not be excluded but not leave it to the witness to determine but reach that determination yourself and accordingly ask him such questions as will put [fol. 133] in the record what you wish.

By Mr. McCain:

Mr. Ledbetter, when you came in October, did you, answer yes or no now, did you proceed to organize the plant at the employees at the Arkansas Oak Flooring?

A. I did.

Q. Will you state whether or not stewarts were selected by the employees?

A. They were.

Q. How many stewarts were selected?

A. I have a record of them but I don't—it seems to me it was around twelve.

Q. Did you elect officers, did the employees elect officers in their union?

A. They did.

Q. When were these officers, approximately when were these officers elected?

A. I don't remember the exact date. But it was before Christmas of '53—maybe it was somewheres near December 1st.

Q. Did you proceed in this connection with signing up various employees at the Arkansas Oak Flooring Company to union applications and union cards?

A. I did.

Q. I show you what purports to be a membership application and checkoff authorization District 50, United Mine Workers, and ask you if you can identify that document?

A. I can.

Q. Will you state whether or not the organization of the local union at the, among the employees of the Arkansas Oak Flooring Company, if any of the employees signed this particular application?

A. You mean that particular one?

Q. No, one like it, Mr. Ledbetter.

A. They were all like that.

Q. In other words, that is a copy of the one that they all signed?

[fol. 134] A. They're all alike. I couldn't say it's a copy but they're all alike.

Q. That's an exact reproduction of what the employees signed?

A. That's right.

Q. And how many signed that particular document before the strike was called?

A. We had 174 cards signed when I asked for recognition, if that will answer your question.

Q. Yes, that's what I want to know. Have you signed up any since March 1?

A. Yes?

Q. How many?

A. Well, we have 179 now. That would be five.

Q. Now, you said that you had 174 of the employees at the Arkansas Oak Flooring signed to this document which I have identified as "D-1" and which I now offer in evidence as Defendant's Exhibit D-1, and at the time that you went and asked for recognition and had 174 signatures on the D-1 application, will you tell the Court the circumstances under which you went and asked for recognition?

By Mr. Stafford:

If Your Honor pleases, I think all of that has been testified to before. I don't particularly object to the man repeating if he wants to and if the Court wants to hear it but I know every bit of it came in on the trial of the exceptions.

By the Court:

If the Court recalls the testimony, it was put in evidence that Mr. Fowler was approached and I don't know whether counsel remembers that. If you wish to amplify that you may.

By Mr. McCain:

I would like to give the whole story since now they have made an issue of the fact that the company did not receive

notice and by asking the witness the questions about the nature of the notice to the company I do not — that we have any objections that the company could not raise that issue in this particular case because they did not plead it.

Q. Will you give us the details of your demand on Mr. Fowler for recognition of United Mine Workers, District 50, as the bargaining agent for the employees?

[fol. 135] A. If I understand the question right, you want me to tell — did I go to him and ask for recognition, is that the question?

Q. Well, I'll give it to you piece by piece then, Mr. Ledbetter.

By Mr. Pitts: Ask him what he did, Mr. McCain, don't lead him, please.

Q. Did you meet with the union the night before you went to see Mr. Fowler?

A. I did.

Q. What did the union authorize you to do at that particular time?

A. They authorized me to go and ask for recognition of our union.

Q. Was that a unanimous authorization by all of the members of the union?

A. It was.

Q. When did you have that meeting? What time of the day?

A. That was after quitting time so I guess it must have been, the meeting probably started about 5:15-20 something like that on Wednesday I believe. I'm not sure. I would have to check my records.

Q. But it was after working time?

A. Yes.

Q. Where did you meet?

Objection by Mr. Stafford: If your Honor pleases, counsel is straying. Your Honor ruled that he could prove that a demand was made and the circumstances about the demand but now we're going into inter-union affairs that we're not concerned with. We weren't at the meeting. It's every bit hearsay to us. It's something done by other people. It's assumed that this man when he went there that he had authority.

By the Court: Sustained.

By Mr. McCain: Were you authorized to make a demand n the company for the purpose of union recognition?

A. I was.

Q. Now, the next day, did you go to the plant for that urpose?

A. I did.

Q. Who went with you?

fol. 136] A. I went alone. I was to meet the president out here at the noon hour. They get off an hour for noon and Ir. Fowler was late getting back to work so the employees ave to punch in after the noon hour to go back to work.

Q. Now, just a minute. You say you met the president, ou mean—what man?

A. Brown.

Q. The president of the union?

A. Local union.

Q. Very well, go ahead.

A. So Brown immediately, his time—his time ran out, he urned to punch in to go back to work and he saw the car ome in that Mr. Fowler come in and he pointed him out to ne that that was him so I seen him and talked with him. sked him for recognition.

Q. With—hom?

A. Mr. Fowler.

Q. Now do you see him in Court here? Is this the man ou talked to?

A. Well, I only seen the man for just a few minutes. I hink that's the man. I believe he had on working clothes hat day though.

Q. Well, did you ask him for his name?

A. I went up and introduced myself. He got out of the ar when he stopped and he came walking back meeting me. le said, "Are you looking for someone?" I says "I'm ooking for Mr. Fowler". He said, "I'm Mr. Fowler." presented my credentials to him and told him that we epresented a majority of his employees. He told me that e wasn't recognized by the National Labor Relations Board nd that he didn't recognize us either.

Q. What else was said?

A. I told him we would love to talk the matter over with him and he said he had no more talk to do. So he turned away and I did too.

Q. Did he tell you anything—what you could do about it?

A. He said we could do what we wanted to.

Q. Well, at that time did you make a formal demand on him for recognition of the union?

[fol. 137] A. I did.

Q. When you say you gave him your credentials, what did you show him, Mr. Ledbetter?

A. The credentials that I am issued from my superior.

Q. Well, what is that? Well, just tell me what it is.

A. Well, it's a card showing who I am.

Q. Showing that you're an organizer?

A. Right.

Q. Now, after that did you report back to the union?

A. I reported back to the local union.

Q. That is the local union of the employees at Arkansas Oak?

A. Right.

Q. And when did you report back to them?

A. It was that afternoon. I have a record of all of this in my reports. It may have been the next afternoon. I'm not positive but anyway as soon as a meeting could be called.

Q. Well, it was either the same day or the next day?

A. Right.

Q. And you had a meeting?

A. Yes.

Q. And did you report to the members of the union what had happened?

A. I did.

Q. And did they authorize a strike because they refused to recognize the union?

A. They voted to strike for recognition.

Q. And the strike was called when?

A. On March the 1st, I believe it was.

Q. When did you first put up your pickets?

A. First day of the strike.

Q. Well, what day was that?

[fol. 138] A. It was on a Monday.

Q. March 1st.

A. I think so.

Q. Well, that's correct isn't it?

A. That's correct.

Q. That's what I want to know. Was the picketing peaceful?

A. It was.

Q. How many pickets did you put up?

A. We put up two when we first set up and the fellows begin to gang down there and the Deputy Sheriff, he came over and talked to me and told me some word that the Sheriff had told him to so I told him not to worry. We wasn't going to have any trouble. We was going to conduct ourselves peacefully and I talked with the fellows and we cut it down with about two pickets with about four men more to use as relief so actually it's been six men, with two at a time.

Q. And they picketed the plant only?

A. Yes, sir.

Q. The pickets were placed on what street?

A. I think they call it Texas Avenue or Street. Texas something. I don't know if it's street or avenue.

Q. Were any put in the back by the railroad?

A. I think there were one put back there. However, I was not back there.

Q. Now, do you have present with you the signed membership applications?

A. I do.

Q. May I have them.

A. I have them right over there.

Q. Will you get them Mr. Ledbetter? I show you an envelope containing a number of signed membership applications and ask you if you're familiar with these papers?

A. I am.

[fol. 139] Q. Will you state whether or not they are the signatures of the employees at the plant?

A. I will.

Q. And they constitute how many signed applications?

A. 179.

Q. The applications as identified by the witness we offer

in evidence marking the group, sir, as D-2 which I will keep in this sealed envelope.

Cross-examination:

By Mr. Pitts: Counsel for Plaintiff.

Q. Mr. Ledbetter, as I recall your testimony, you said you worked with the employees around the mill there from October or November up until the first of March, is that right?

A. Yes, that's right.

Q. In contacting various ones of them and organizing them etc.?

A. Yes.

Q. Well, during that period of some four months, Mr. Ledbetter, did you learn that Mr. S. C. Griffith was the General Manager of the Alexandria plant?

A. No. I didn't.

Q. Did you make any effort to learn who the General Manager was?

A. No, because a manager can't belong to a union so naturally I wouldn't hunt him up.

Q. On the day you talked to Mr. Fowler, did you know Mr. Griffith was out of town?

A. I had been informed to that effect.

Q. That's all.

Redirect examination:

By Mr. McCain: Counsel for Defendants.

Q. Mr. Ledbetter, after you reported back to the local union, the group, the results of your conversation with Mr. Fowler, what action did they take?

[fol. 140] A. They taken a vote.

Q. And what was the vote for?

A. To strike for recognition.

Q. And when the pickets were set up around the plant on March 1, 1954, why were they set up?

A. They had voted to strike and they struck on March 1st.

Q. Because of what reason?

A. For recognition.

Q. Of what?
A. The union.
Q. As a bargaining agent at the plant?
A. That's right.
Q. For the employees?
A. That's right.
Q. That's all I have, sir.
Witness excused.

By Mr. McCain: The defense rests.

[fol. 141] Mr. George Fowler called in rebuttal on behalf of plaintiff.

Objection by Mr. McCain: I make a general objection to the testimony of this witness as he intends to prove a lack of notice of the company of the intentions of the union and, therefore, the picketing is illegal for the simple reason, as I stated before, the pleadings do not show they raised any question as to the propriety or legality of the strike or picketing because of failure to give any notice to the company.

By the Court:

Objection overruled.

By Mr. Pitts:

Counsel for Plaintiff.

Q. You live in Alexandria do you Mr. Fowler?
A. Yes, sir.
Q. How long have you lived here?
A. Twenty-six years.
Q. Are you employed by the Arkansas Oak Flooring Company?
A. I am.
Q. How long have you been with the company?
A. Off and on since about 1922.
Q. You presently employed in the Alexandria plant?
A. Yes, sir.
Q. What are your duties at the plant, Mr. Fowler?
A. Well, my title is Assistant Manager but I'm in charge of production, manufacturing.

Q. Mr. Fowler, do you have anything to do with policy making in connection with wages, hours, etc.?

A. Absolutely none. That's all fixed at the Pine Bluff office.

Q. You've heard Mr. Ledbetter testify about having a conversation with you sometime during the week preceding March 1st. Tell us just what happened.

A. Well, it was about a quarter to one, possibly twelve minutes of one, when I got back to the plant. I'd seen Mr. Ledbetter just as I went to dinner so when I got back—I usually take one of the shipping clerks and the lumber in-[fol. 142]inspectors to lunch. So they got out of the car and he walked around the car. I asked him if he wanted to see somebody. He said, "Yes. I want to see you." Pulled out his credentials and I looked at it. Saw United Mine Workers and he said, "I want to call a meeting." I said "not with me". I said, "Your organization is not recognized by the National Labor Relations Board", and he said, "Well, that's a matter of opinion."

Q. And what else did you tell him?

A. I told him, I said, "If you want to negotiate, I suggest you call the Pine Bluff office."

Q. Did you mention Mr. Smith's name?

A. I believe I did. I wouldn't be positive but I believe I did.

Q. You didn't lead him to believe that you had authority to deal with him?

A. Absolutely none.

Q. And is that the only time Mr. Ledbetter ever talked to you?

A. That's the only time I've ever seen the gentleman until just a second ago.

Cross-examination.

By Mr. McCain: Counsel for Defendants

Q. Mr. Fowler, do you remember what day this was?

A. I believe on Wednesday at noon, about a quarter 'til one.

Q. And that was the Wednesday before the strike?

A. Yes, sir. I'm almost positive it was Wednesday. I wouldn't swear to it.

Q. And that was at your Alexandria plant—your conversation?

A. Yes, sir.

Q. Mr. Griffith was not in town then?

A. No, sir. He was over in Texas.

Q. And you were in charge of the plant at that particular time?

A. I was in charge of the plant, the manufacturing end. I had no jurisdiction over the office or the management of the plant itself.

[fol. 143] Q. When Mr. Ledbetter came up to you, he did show you his credentials?

A. He showed me his credentials.

Q. And you looked at them?

A. I glanced at them. I saw enough to know he was with the United Mine Workers, yes.

Q. I think you said you told him that this particular union was not recognized by the Labor Board?

A. By the National Labor Relations Board, yes.

Q. How did you know that?

A. Well, I read it in several cases, and have had occasion at one time, that there was a case in Shreveport where they tried to organize.

Q. Well, you knew they were organized in your plant ~~didn't~~ you?

A. I did know that they were trying to organize, yes, before Christmas. Some of the white men had told me.

Q. And you had discussed it, I assume, with other of the officers or Mr. Griffith or Mr. Smith, hadn't you?

A. Well, I don't believe I ever discussed it with Mr. Smith, but Mr. Griffith and I had a little discussion about it.

Q. Did Mr. Griffith inform you at any time that the Mine Workers were not recognized?

A. He did not.

Q. Did you discuss it with him at any time?

A. No sir.

Q. But you told him that you would not negotiate with the Mine Workers?

A. I told him that I would not and suggested that he call the Pine Bluff office and he said he would. That was the last word I had with him.

Q. Did you tell him he could do anything he saw fit in the matter?

A. No, sir, I did not.

Q. You're not positive about whether you told him to call Mr. Smith or not?

[fol. 144] A. I wouldn't be positive. I suggested he call the Pine Bluff office. I knew he would have to talk to Mr. Smith if he talked to anybody.

By Mr. Pitts:

Plaintiff closes.

Testimony concluded.

[fol. 145] Stenographer's Certificate to foregoing transcript omitted in printing.

[fols. 146-147] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 148] IN THE NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

City of Alexandria,
Thursday, March 25, 1954.

The District Court, civil section, met this day according to law, His Honor Judge Allen V. Hundley presiding. Previous minutes were read and approved.

MINUTE ENTRIES

43,739—Arkansas Oak Flooring Company vs. United Mine Workers of America. Judgment read and signed. see decree. Written motion on counsel for defendants filed praying for a devolutive appeal. Motion for devolutive appeal granted, returnable to the Honorable Supreme Court of Louisiana, New Orleans, Louisiana, on or before April 16th,

1954, devolutive appeal bond fixed in the sum of $500.00. Case set for trial for June 24, 1954.

* * * * * * * *

Court then adjourned according to law.
Approved: Allen V. Hundley, Judge.

STATE OF LOUISIANA,
Parish of Rapides:

City of Alexandria,
Thursday, June 24, 1954.

The District Court, civil section, met this day according to law, His Honor Judge Walter M. Hunter presiding. Previous minutes were read and approved.

* * * * * * * *

43,739—Arkansas Oak Flooring Company vs. United Mine Workers of America, et al: This cause coming on this day, pursuant to regular assignment, was called and trial had. Answer filed. The following stipulation entered: "The Plaintiff re-offers all evidence previously taken in this case on the trial of the preliminary injunction and submits the matter to the Court on this vendice. Defendant likewise [fol. 149] offers all the evidence previously taken in this case on the Exceptions and otherwise, and submit the matter for decision on the merits. It is further agreed that the record or transcript already made up in this Court and sent to the Supreme Court on the hearing of the preliminary injunction may be used in connection with the appeal of the judgment rendered this day to the Supreme Court, and shall constitute a part of the record on this appeal without the necessity of retyping the previous record." Judgment rendered, read and signed, see decree. Upon motion of counsel for the defendants, a devolutive appeal was prayed for and granted, returnable to the Honorable Supreme Court of Louisiana, New Orleans, Louisiana, on or before August 23, 1954, devolutive appeal bond fixed in the sum of $500.00.

* * * * * * * *

Court then adjourned according to law.
Approved: Allen V. Hundley, Judge.

union which is not in fact entitled to recognition, and from the hazard of denying recognition to an uncertified union which actually is validly authorized to represent an appropriate unit * * *." Pages 13 and 14. (Emphasis supplied.)

However, in Section 9 Congress also precluded investigation by the Board of any question concerning the representation of employees raised by a labor organization, as well as the issuance of any complaint with respect to an unfair labor practice at the behest of a labor organization until that organization had complied with the provisions of subsection (f) with respect to the filing of detailed information relative to the Union's organizational structure. Additionally, and in furtherance of "its policy of wholly eradicating and barring from leadership in the American labor movement, at each and every level, adherents to the Communist party and believers in the unconstitutional overthrow of our Government,"[5] Congress adopted Section 9 (h) which provides that "*No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section,*[6] * * * [fol. 175] and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10,[7] *unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not*

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[5] N. L. R. B. v. Happ Bros. Co., 196 F. 2d 195. See, also, American Communications Assn. v. Douds, 339 U. S. 382, 94 L. ed 925, and particularly the concurring opinion of Justice Jackson at 94 L. ed 956.

[6] Authorizing the Board to investigate a question of representation upon the petition of the employer, employee, or labor organization, as above described in the petition.

[7] Authorizing the investigation through the procedure set out in Section 10 (b) the unfair labor practices as listed in Section 8.

[fol. 150]. [File endorsement omitted]

IN NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

ANSWER—Filed June 24, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

Now into Court, through undersigned counsel, come all parties made defendant in the above and foregoing matter for to answer to the petition herein on the merits and particularly, but not exclusively, to the petition and prayer to the extent that petitioner seeks a permanent injunction, and reserving all rights under the exceptions previously filed herein, respectfully aver:

Defendants admit the introductory paragraph of the petition.

1. Defendants admit that the United Mine Workers of America is an unincorporated labor organization, but deny that James Ledbetter is its agent or representative for process or legal service and deny that said United Mine Workers of America is within the jurisdiction of this Court.

2. Defendants admit the allegations of Paragraph 2 of the petition, but deny that James Ledbetter is temporarily residing in Rapides Parish, Louisiana.

3. Admitted.

4. Defendants deny the allegations of paragraph 4 of [fol. 151] the petition, except as hereinafter admitted.

5. Defendants deny paragraph 5 of the petition, except as hereinafter admitted.

6. Denied.

7. Denied.

8. The allegations of paragraph 8 of the petition are denied except that defendants admit and aver that there is a bona fide labor dispute existing between the petitioner, as employer, and defendants.

9. Denied.

10. Denied

11. Denied.
12. Denied.
13. Denied.
14. Denied.

And further answering defendants aver:

15

(a) That there is a bona fide labor dispute between petitioner as employer and all defendants and other employees of petitioner.

(b) That approximately 182 of petitioner's employees in the plant, or approximately 80 percent of said mill employees have designated District 50, United Mine Workers of America, a separate unincorporated labor organization as their bargaining agent at petitioner's plant.

(c) That petitioner, through its officers, has been so informed and defendants and other employees of petitioner have sought to have said labor organization recognized as the bargaining agent for said employees, and defendants and other of said employees have sought to negotiate with the employer on working conditions and terms, through said representative, and said petitioner has refused to negotiate or meet with its employees.

[fol. 152] (d) That a picket line was set up near petitioner's plant, on public property, on March 1, 1954 by a large majority of the employees of petitioner's plant for obtaining recognition of the plant employees selected bargaining agent.

(e) That said picket line at no time consisted of more than three pickets; that it was peaceful; that there were no threats or violence to anyone at any time in connection with this matter.

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Defendants further aver also, or in the alternative, that this matter involves an unfair labor practice and representation, growing out of a labor dispute in the field of interstate commerce and within the exclusive jurisdiction of the National Labor Relations Board.

union since the effective date of the amendments to the Act, even though it won a victory at the polls before that date; it has declined to place such a union on the ballot, as intervenor, in an election held at the instance of a petitioning labor organization that has complied with Sections 9 (f) and (h), even though its intervention at the hearing was otherwise proper; and *it has declined to order an employer to bargain collectively with a non-complying union*, except upon compliance by the union within a specified period.

[fol. 177] "Here the petitioner is not a complying labor organization, but the employer. The fact remains that the question concerning representation, although brought to the Board's attention by the employer's own petition, was 'raised by a labor organization.' It was raised by the affirmative claim, here made both by the Fur Workers, CIO, and by the Adirondack Workers, that a labor organization represented a majority of the employer's employees within an appropriate unit. * * * *Although it is the employer's petition in such a case that sets the Board's machinery in motion, it is an individual's or a labor organization's initial claim for recognition that makes it possible for the employer to invoke that machinery.* If, as here, a labor organization that presented a claim for recognition has not complied with the provisions of Section 9(f) and (h), we would no more implement the policy of Congress if we placed it on the ballot than if we were to do so in a case in which it, or another labor organization, filed the formal papers with the Board. *If a non-complying union were placed on the ballot and happened to win the election, no one could expect the Board under the amended Act to issue a certification that would run in its favor.* But a victory at the polls, even without later formal certification, would confer certain moral and practical advantages on the non-complying union which the basic policy of Congress appears to discountenance. Such a result can be averted with certainty only by our declining to place a non-complying union on any ballot, unless there are absolutely compelling statutory or policy reasons for doing so.

"In our opinion, *the fact that a petition has been filed by an employer rather than by a labor organization does not*

Defendants aver that the right to picket peacefully, (as conducted herein by defendants and other employees of the petitioner), is protected by the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 3 of the Constitution of Louisiana.

And defendants also aver that this right to peacefully picket being concerted action by employees involving their employer engaged in interstate commerce, is action protected by the National Labor Relations Act enacted under the Commerce Clause of the United States Constitution and is, therefore, beyond State regulation or restraint.

And defendants further aver that this Honorable Court has no jurisdiction under the statutory law of the State of Louisiana to issue a permanent injunction herein.

Wherefore, defendants pray for judgment in their favor, denying a permanent injunction and denying any relief sought by petitioner; and that petitioner's suit be dismissed [fol. 153] at its cost and for all general and equitable relief, and for all costs.

(S.) James I. McCain, 818 Whitney Bldg., New Orleans, La., Attorney for defendants.

Dated June 22, 1954.

Duly sworn to by James I. McCain. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 154] In Ninth Judicial District Court Parish of Rapides, State of Louisiana

[Title omitted]

Stipulation as to Evidence—Filed June 24, 1954

The Plaintiff re-offers all evidence previously taken in this case on the trial of the preliminary injunction and submits the matter to the Court on this evidence.

provide such compelling reasons. The question concerning [fol. 178] representation remains a question 'raised by a labor organization' which has made a claim for recognition as bargaining representative. An employer petition, like a union petition, seeks to resolve the question of who, if anyone, is the true bargaining representative of the employees. Either sets in motion the same investigative process; the same result, either of certification or of dismissal, may flow from either; and a Board election conducted on the basis of either will now preclude another Board election for 12 months. This similarity between employer and union petitions, both in purpose and in result, points strongly to the conclusion that a non-complying union should derive no more advantage from the one than it does from the other. The statutory language supports the same conclusion. Sections 9(f) and (h) speak in terms of questions raised, rather than of petitions filed, by labor organizations. An employer petition must allege that he has been presented with a claim by an individual or a labor organization for recognition as bargaining representative of his employees. The distinction which Congress intended to draw by the words 'raised by a labor organization' is, we believe, between a claim for recognition made by a union and a similar claim by an individual or individuals, not between a union petition and an employer petition filed with the board. * * *

"* * * *We believe* * * * *that the exclusion of non-complying unions from the ballot in cases where employers are the petitioners is more nearly consistent with the supervening policy of denying the imprimatur of Government to such labor organizations.*" To this same effect are the later decisions in Staten Island Cleaners, Inc., 93 NLRB 63; and The Federal Refractories Corp., 100 NLRB 35. (All emphasis has been supplied.)

[fol. 179] The Act permits individual employees, as well as the employer, to petition the Board with respect to questions concerning representation and unfair labor practices, but the United States Court of Appeals for the Fifth Circuit, in N.L.R.B. v. Happ Brothers Co., 196 F. 2d 195, held it would not permit individual employees, bringing charges of unfair labor practices against an employer, to thus "front" for a non-complying union that was without access

Defendants likewise offer all the evidence previously taken in this case on the Exceptions and otherwise, and submit the matter for decision on the merits.

It is further agreed that the record or transcript already made up in this Court and sent to the Supreme Court on the hearing on the peliminary injunction may be used in connection with the appeal of the judgment rendered this day to the Supreme Court, and shall constitute a part of the record on this appeal without the necessity of re-typing the previous record.

(S.) James I. McCain, Attorney for all Defendants.

[File endorsement omitted.]

[fol. 135] In Ninth Judicial District Court, Parish of Rapides, State of Louisiana

No. 43,739

Arkansas Oak Flooring Company

versus

United Mine Workers of America, et al.

Judgment on Permanent Injunction—June 24, 1954

This cause having come on for trial on the merits, trial being regularly had and the court being of the opinion that the plaintiff is entitled to the relief prayed for, for reasons orally assigned,

It is, therefore, ordered, adjudged and decreed that a permanent injunction issue herein enjoining and prohibiting the United Mine Workers of America, its officers, members and employees, and the other defendants herein, James Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Euiler, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, and any and all other persons acting for or in behalf of said defendants, from picketing on, near or about plaintiff's

to the board's facilities. It accordingly refused to enforce the Board's directive to the employer, brought at the instance of an employee, ordering it to cease and desist from the unfair labor practices there charged, stating it would not thus permit the great purpose of the amendment requiring the filing of non-communist oaths to be "rendered nugatory and destroyed" by the subterfuge of or resort to the simple expedient of employing an individual to "front" for non-complying unions.[8]

In Labor Board v. Highland Park Mfg. Co., 341 U.S. 322, 95 L. ed. 969, the Supreme Court of the United States, holding that the Board was without authority to order an employer to bargain with a local union whose affiliate or parent union had not filed the requisite non-communist affidavits provided for in the Act, said: "*The Board is a statutory agency and, when it is forbidden to investigate or entertain complaints in certain circumstances, its final order could hardly be valid.*" See, additionally, the annotations at 95 L. ed. 979 and 97 L. ed. 415. (Emphasis supplied.)

It necessarily follows that inasmuch as the Union in the instant case has, by its own admission and as certified to by the National Labor Relations Board, failed and refused to comply with the provisions of Sections 9(f) (g) and (h) [fol. 180] of the 1947 amendment, the Board is without jurisdiction to entertain any question with respect to its protestations of majority representation and/or unfair labor practices; for it is not only ineligible for certification, but cannot compel the employer to recognize it as the representative of its employees. The plaintiff's refusal to recognize the Union was, therefore, not in violation of any obligation imposed by law, and the picketing in furtherance of this unlawful objective was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy—injurious conduct which the state has jurisdiction to relieve. See, Stewart-Werner Corp. v.

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[8] The picketing in the instant case is tantamount to organized activity engaged in for the purpose of compelling the employer to "front" for the Union in a representation matter before the Board.

property or approaches thereto just off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana.

Judgment rendered in open court on this the 24th day of June, A.D. 1954.

(S.) Allen V. Hundley, Judge.

[File endorsement omitted.]

[fol. 156] IN NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES, STATE OF LOUISIANA

[Title omitted]

MOTION AND ORDER OF APPEAL—Filed June 24, 1954

To the Honorable the Judges of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana:

On motion of United Mine Workers of America and all other parties made defendant in the above and foregoing matter, through their attorney, James I. McCain, and on suggesting to the Court that defendants are aggrieved by the judgment for a permanent injunction herein rendered on the 24th day of June, 1954 and signed on the 24th day of June, 1954, said judgment being rendered in favor of plaintiff; that the said judgment is contrary to the law and the evidence, and that movers desire to appeal devolutively therefrom to the Supreme Court of the State of Louisiana,

It is ordered that a devolutive appeal be granted to the said United Mine Workers of America and all defendants in this matter, returnable to the Supreme Court of the State of Louisiana, on the 23rd day of August 1954, upon said parties furnishing bond with good and solvent security in the sum of (blank) June 24, 1954.

(S.) Allen V. Hundley, Judge.

Service accepted, citation waived, all rights reserved. 6-24-54. John L. Pitts, Atty. for Pltf.

[File endorsement omitted.]

National Labor Relations Board, 194 F. 2d 207;[9] Goodwins, Inc. v. Hagedorn, 303 N. Y. 300, 101 N. E. 2d 697; Fulford v. Smith Cabinet Mfg. Co., 118 Ind. App. 326, 77 N. E. 2d 755; Cordey China Co. v. United Mine Workers of America, 25 N. J. Super. 514, 96 A. 2d 696; and Simmons v. Retail Clerks Union Local 779, 14 Labor Cases 73,335.

Counsel for appellants, with respect to the third specification of error urged, concedes in brief that since the trial [fol. 181] of this case on the merits the Douglas Public Service and Godchaux Sugars, Inc., cases have been decided adversely to his contention that the state is without right under Louisiana law to enjoin peaceful picketing, but he contends that in so holding we violated a cardinal rule of constitutional construction in that we invalidated the state's anti-injunction statute although such conclusion was unnecessary, inasmuch as we found violence occurred during the course of both of these labor controversies.

Counsel is in error in this statement, for we declared in the Douglas Public Service case (approved in the Godchaux case) in clear and unequivocal language that "* * * any act of the legislature, whether procedural or substantive, that infringes or trenches upon the constitutional prerogatives of the courts, cannot stand;" consequently, that

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[9] In this case officials of a non-complying union, acting in their individual capacities, sought to charge the employer with an unfair labor practice because of the employer's refusal to permit the circulation of petitions on its property in connection with an attempt to organize the employees. In concluding such conduct did not constitute an unfair labor practice by the employer, the United States Court of Appeals for the Fourth Circuit said: "There is nothing in the Labor Management Relations Act which requires an employer to permit his premises to be used by employees for activities in contravention of the spirit and purpose of the act. The company was under no obligation to recognize or deal with the (non-complying Union) even if it had obtained a majority, and, a fortiori, was under no obligation to permit adherents of the (Union) to use its premises * * * in carrying on a campaign in behalf of the (Union)." (Brackets added.)

[fols. 157-158] Bond on appeal for $500.00 filed June 26, 1954; omitted in printing.

[fols. 159-161] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 162] IN SUPREME COURT OF THE STATE OF LOUISIANA

No. 41797

ARKANSAS OAK FLOORING COMPANY, Plaintiff and Appellee,

versus

UNITED MINE WORKERS OF AMERICA, et als., Defendants and Appellants

MOTION TO CONSOLIDATE APPEALS AND ORDER THEREON—August 16, 1954

On motion of James I. McCain, Attorney for defendant and appellants, it is respectfully suggested to this Court:

1

That an appeal was filed herein in the above matter on April 12, 1954, which constituted an appeal from a judgment rendered by the Ninth Judicial District Court for the Parish of Rapides and which was a judgment refusing appellants a preliminary injunction in this matter.

2

That on July 26, 1954, there was filed by appellants a second appeal in this same case under the same title, being No. 44983 of the docket of this Court, and which record constituted an appeal by appellants in this same matter from a judgment by the same Court, refusing appellants a permanent injunction.

3

That both appeals are in the same case and involve the same evidence and testimony and constitute one and the same matter, and mover respectfully prays that these two

the "provisions of the so-called anti-injunction act that seek to limit the jurisdiction of the district courts of this state in granting immediate relief, if that is necessary for the protection of rights and property, are illegal and ineffective." It necessarily follows that the doors of the courts of this state cannot be closed to the plaintiff here upon the showing made that irreparable injury was being suffered by it as a consequence of the unlawful activities of the defendants.

The final contention—that the restraint of the picketing in this case is an infringement of the freedom of speech guarantees of the Federal and state constitutions—is also untenable inasmuch as we have found as a fact that the picketing here engaged in is for an unlawful objective. Hughes v. Superior Court of California, 339 U. S. 460, 70 S. Ct. 718, 94 L. ed. 985; International Brotherhood of [fol. 182] Teamsters v. Hanke, 339 U. S. 470, 70 S. Ct. 773, 94 L. ed. 995; Building Service Employers International Union v. Gazzam, 339 U. S. 532, 70 S. Ct. 784, 94 L. ed. 1045; Richman Brothers Co. v. Amalgamated Clothing Workers, 116 N. E. 2d 60, affirmed by the United States Supreme Court on April 4, 1955; W. E. Anderson Sons Co. v. Local Union No. 311, 156 Ohio St. 541, 104 N. E. 2d 22; as well as Cordey China Co. v. United Mine Workers of America, 95 A. 2d 696, and the authorities therein cited.

In disposing of this issue adversely to the contention of the defendants in the recent decision in Godchaux Sugars, Inc. (supra), we observed:

"It is true that the United States Supreme Court has likened picketing to speech, but this sweeping analogy as first enunciated in Thornhill v. Alabama, 310 U. S. 88, has since been greatly refined and restricted. In Hughes v. Superior Court of California, 339 U. S. 460, 70 S. Ct. 718, 94 L. ed. 985, the United States Supreme Court * * * said: '"(T)he domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states," * * * no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing "is more than free speech, since it involves patrol of a particular locality and since the very presence

appeals be consolidated for presentation and argument in this Court.

James I. McCain, Attorney for Defendant and Appellants.

[fol. 163] ORDER

Considering the above and foregoing Motion

It is hereby ordered that the appeals in this case No. 41797 and No. 41983 be consolidated on the docket of this Court for the purpose of presentation and argument.

New Orleans, Louisiana, August 6, 1954.

(Signed) Joe B. Homiter, Assoc. Justice.

Certificate of service (omitted in printing).

[fol. 164] IN SUPREME COURT OF THE STATE OF LOUISIANA

[Title omitted]

MOTION FOR PREFERENCE—Filed April 22, 1954

On motion of James I. McCain of counsel for Appellants and on suggesting to the Court that mover desires that this cause be placed on the preference docket:

It is ordered that the above entitled and numbered cause be placed on the preference docket of this Court.

(Signed) Jno. B. Fournet, Chief Justice.

[File endorsement omitted.]

(Certificate of service omitted in printing.)

[fol. 165] IN SUPREME COURT OF LOUISIANA

Nos. 41,797 and 41,983

ARKANSAS OAK FLOORING COMPANY

v.

UNITED MINE WORKERS OF AMERICA, et al.

Appeal from the Ninth Judicial District, Parish of Rapides, Hon. Allen V. Hundley, Judge

OPINION—April 25, 1955

Hamiter, J., concurs in the decree. Hawthorn, J., dissents in part with written reasons.

FOURNET, Chief Justice:

The United Mine Workers of America, District 50, and twelve other named defendants [1] are appealing devolutively from the judgments of the lower court granting to the plaintiff, Arkansas Oak Flooring Company, a preliminary and permanent injunction [2] restraining them "and any and all other persons acting for or on" their behalf "from picketing on, near or about plaintiff's property * * * just [fol. 166] off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana."

The facts pertinent to a decision of the issues raised in this case are, substantially, that the Arkansas Oak Flooring Company (admittedly engaged in interstate commerce), with principal offices in Pine Bluff, Arkansas, operates a sawmill and flooring plant near the City of Alexandria, Louisiana, where it is engaged in the business of manu-

[1] James L. Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb, and John Doggins.

[2] No. 41,797 on the docket of the court is the appeal taken from the judgment granting the preliminary injunction, and No. 41,983 is the appeal taken from the judgment granting the permanent injunction.

facturing lumber and oak flooring. The employees in this plant had been unorganized for a period of some four years and there was no dispute between the employer and employees with respect to working conditions, wages, or hours, when, in October or November of 1953 James L. Ledbetter, claiming to represent the United Mine Workers of America, District 50—a Union that has admittedly failed and refused to comply with the requirements of Section 9 (f) (g) and (h) of the Labor Management Relations Act of 1947[3]—arrived in Alexandria for the exclusive purpose of contacting the plaintiff's employees, with the avowed intention of ultimately compelling recognition of this Union as the bargaining representative of such workers. Purportedly having authority from some 174 of the plaintiff's 225 employees, exclusive of officers, inspectors, and foremen, who had allegedly joined the Union, Ledbetter, [fol. 167] on February 23, 1954, at a time when he knew the plant manager was out of the state, presented his demand for recognition of the Union to the assistant manager, who advised Ledbetter that inasmuch as the Union was not recognized by the National Labor Relations Board, he would not recognize it, and further advised that if Ledbetter desired to negotiate further he would have to take the matter up with the company officials in Pine Bluff, where all matters of policy were handled. Instead, a strike was called to compel recognition of the Union on March 1, 1954, and the picket line thrown up in connection therewith caused a large number of the plaintiff's employees to refuse to cross the line and report for work, with the result that the employer's operations were greatly curtailed and irreparable loss was sustained.

The company thereupon secured a temporary restraining

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[3] Section 9(f) and (g) require that a Union seeking to be declared the bargaining agent of employees file with the Secretary of Labor certain information relative to its organizational and financial structure, and Section 9 (h) requires the filing of affidavits with the National Labor Relations Board in which the Union's officers deny membership in or affiliation with the Communist Party and deny belief in the overthrow of the United States government by force.

order with a rule to show cause why a preliminary injunction should not issue, and, ultimately, a permanent injunction be granted. On the return day, the Union excepted to its citation through Ledbetter, contending that as an unincorporated labor organization with no corporate existence in Louisiana it could not be impleaded into court under its group or company name; further, that the court had no jurisdiction rationae personae since Ledbetter was not authorized to receive process for the members of the group or to stand in judgment for the Union. On this same day, all defendants excepted to the petition on the ground of vagueness, and also to the court's jurisdiction rationae materiae, the latter exception being predicated on the assertion that the National Labor Relations Board alone has jurisdiction to halt the peaceful picketing of an employer whose business is affected by interstate commerce. [fol. 168] In answer, all defendants generally denied the allegations of the petition, reiterated the matters set out in the exceptions, and asserted, additionally, that the right to strike and to picket peacefully as an expression of free discussion is protected by the First and Fourteenth Amendments to the Constitution of the United States, and Section 3 of Article I of the Constitution of Louisiana.

The exceptions were overruled and the preliminary injunction granted, which, following trial on the merits, was made permanent. These appeals followed.

Counsel for the defendants is contesting here, under specifications of error set out in brief, the correctness of the trial judge's ruling with respect (1) to the citation of the Union in its association name and through Ledbetter, (2) the state's assumption of jurisdiction rationae materiae despite the fact the plaintiff is engaged in interstate commerce and an unfair labor practice is involved, and (3) in any event, the right of a state court, under Louisiana law, to enjoin peaceful picketing of an employer's plant to secure recognition as the employee-bargaining representative.

The contention of the appellants that the court had no jurisdiction of the Union rationae personae since Ledbetter was without authority to receive process of citation for the group or to stand in judgment is based upon the generally recognized rule that obtains in the common law that in the absence of an enabling or permissive statute an un-

incorporated voluntary association is not capable of being sued in its common or association name. But this rule is [fol. 169] untenable in Louisiana under the express provisions of the Revised Statutes in this state which provide that "Any voluntary association may be sued on any obligation incurred for the benefit of such association, in the name of the said association and all legal services in such matters shall be made upon the managing official of such voluntary association and in the absence of such official, then upon any other official, and in the absence of all officials, then upon any member of such association." [4] The fact that Ledbetter was not authorized to accept citation in the instant case is, therefore, of no moment.

As pointed out in the recent case of Godchaux Sugars, Inc. v. Chaisson (No. 41,569 on the docket of the court, handed down January 10, 1955). "To hold that an unincorporated group must be individually named and cited before it is susceptible to restraint would be equivalent to holding that, by subterfuge of unincorporation, group action transcends individual rights and is unlimited and unrestrictable except within the purview of the criminal statute, or that corporations unauthorized by law cannot be restrained from doing irreparable injury except through the process of individual identification." The reason given therefor is that "time is of the essence in the nature of the relief prayed for in this case (and) to require the ascertainment of individual membership of an unincorporated association and thereafter individual citation as conditions precedent to the granting of relief,—and thereby require plaintiffs to gather information almost exclusively within the knowledge of defendants, without whose help it would be [fol. 170] impracticable or perhaps even impossible to gather, and from whom hindrance and obstruction, rather than cooperation, could be reasonably anticipated,—would be tantamount to a denial of relief.

The second, and most important, error allegedly committed by the trial judge, that is, his failure to sustain the plea to the jurisdiction rationae materiae, is predicated upon the theory that this case involves an unfair practice in

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[4] Act of 170 of 1918, which has been incorporated into the Revised Statutes of 1950 as Paragraph 22 of R. S. 13:3471.

a dispute affecting interstate commerce and is, therefore, controlled by the landmark decision in Garner v. Teamsters Union, 346 U. S. 485, 74 S. Ct. 161, 98 L. Ed. 228, holding that such matters are within the exclusive jurisdiction of the National Labor Relations Board.

In the Garner case the Supreme Court of the United States simply gave added emphasis to the well settled jurisprudence that congressional legislation curtails state action in the field intended to be covered and that state action is, within that particular sphere, superseded; consequently, that Congress, by the adoption of the National Labor Relations Act of 1935 (referred to as the Wagner Act), and its amendment in 1947 by the Labor Management Relations Act (known as the Taft-Hartley law), did, with relation to the rights there conferred, place within the jurisdiction of the National Labor Relations Board the enforcement of the rights and privileges there delineated, which enforcement was to be carried out through the administrative scheme therein devised, as supplemented by the judicial remedies prescribed. The court was careful to point out, [fol. 171] however, that the Act "leaves much to the states, though Congress has refrained from telling us how much," leaving it to the judiciary to "spell out from conflicting indications of congressional will the area in which state action is still permissible," and that the Board has no jurisdiction in those zones that are either "governable by the State or * * * entirely ungoverned." As to these spheres, the court has declined to find an implied exclusion of state power and, instead, permits the states to exercise their "historic powers over such traditionally local matters" as injurious conduct which the Board is without express power to prevent, public safety and order and the use of streets and highways, as well as in those cases where the Board "would decline to exercise its powers once its jurisdiction was invoked."

However, the labor activity sought to be restrained in the Garner case was peaceful stranger picketing for the purpose of coercing the employer to compel his employees to join a union—an activity, as demonstrated in the opinion, specifically denounced as an unfair labor practice in the Act. In the instant case the picketing was engaged in for the sole purpose of compelling the employer to recognize

as the legally constituted agent of its employees a union that has no legal status before the National Labor Relations Board because of its failure and refusal to comply with the provisions of the Act requiring the filing of certain information relative to structural and financial matters, as well as non-communist oaths. This is clearly not an act denounced as an unfair labor practice by the amendment of 1947.

Congress, in order to promote the peaceful settlement of labor disputes, in so far as they obstruct the free flow of commerce through strikes and other forms of industrial [fol. 172] unrest, adopted the Act of 1936, and, in 1947, in order to adjust and minimize any differences in the rights granted to unions, employees, and/or employers, amended that act by the adoption of the Labor Management Relations Act.

In Section 9 of this amendment, Congress has, in no uncertain terms, specifically devised the formal mode for the selection and rejection of agents or representatives. Paragraph (a) of the section provides that "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." Under this same section, an employer, if in doubt as to the majority claimed by a unit, can petition the Board for certification of the legally constituted representative, whether one or more unions claim to be the bargaining agent of the employees as defined in Section 9 (a) [Section 9 (c) (1) (B)], *and this certification can only be granted following an election by secret ballot conducted by the Board in accordance with its rules as promulgated in conformity with the provisions set out in the Act.* Section 9 (c) (1). The Board is, therefore, the only administrative agency with authority to certify the proper bargaining agent in a business affected by interstate commerce. It is, additionally, the only agency that has the machinery for conducting the elections that determine that question.

Newman, in his work on "The Law of Labor Relations," gives us the following excellent analysis of the historical

[fol. 173] background of these provisions, as well as their effect:

"The problem of whether a union is the proper bargaining representative of the group of employees for whom the union purports to speak arises when the union asserts that it constitutes the representative body with which the employer is obliged to bargain. If it is, it may bargain for the entire group, by virtue of the cardinal principle that the representatives selected by the majority of the employees shall be the exclusive representatives of all the employees. Under the Wagner Act of 1935 there was no way for the employer to test the validity of the union's claim by obtaining a ruling of the Board on the authenticity of the signature cards, possible withdrawals of authorizations for the union to represent the individual employees, or the absence of coercion by the union organizers against the employees to induce them to sign the authorization. There was no provision for a certification by the Board of the bargaining representative at the request of the employer, although a union might obtain such certification on its request. Under the Wagner Act the employer had to decide for himself, therefore, the difficult questions of fact as to the validity of the proof that the union really was the choice of a majority of the employees * * *. The employer therefore faced the dilemma of refusing to recognize and bargain with the union at the peril that the unit might later be found by the Board to be the proper representative of the employee group, or of dealing with the union at the hazard of finding that a different representative was entitled to recognition. This hardship on the employer was so evident that after a few years of operation under the Wagner Act the Board promulgated an administrative ruling to the effect that where two groups asserted the right [fol. 174] to represent the employees, the employer might demand an election under the direction of the Board before he was obliged to recognize either group. *There was still no relief when only a single group demanded recognition. This evil has now been fully corrected in the Act of 1947,* where by the provisions of section 9 (c) (1) (B) *the employer may petition for an election where any claim for representation is made upon him. The employer is therefore relieved from the hazard of recognizing an uncertified*

a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods." (Emphasis supplied.)

Accordingly, there is, in the record, a letter addressed to the attorneys representing the plaintiff by the regional director of the National Labor Relations Board in which it is stated: "This is to advise that the United Mine Workers of America has not complied with the filing requirements of Sections 9 (f) (g) and (h) of the Act and therefore may not use the services of the Board for either representation or unfair labor practice matters."

Counsel for the defendants conceded during the trial that this Union is non-complying, but argues in brief that "the significance of this means only that the defendant Union cannot use the facilities of the Labor Board to the extent that such are available to complying unions," contending, very ingenuously, that such non-compliance does not render the union an "outlaw," but simply strips it of its right to appeal to the Board for the settlement of matters of representation and unfair labor practices. He insists, therefore, that inasmuch as the employer is not denied the [fol. 176] facilities of the board, it has a duty to negotiate with the union chosen by the majority of its employees and to itself invoke the facilities of the board for the settlement of any grievances it may have with respect thereto.

Counsel is in eror in his appreciation of the significance of these provisions. Shortly after the passage of the 1947 amendment to the Act, in the matter of Herman Loewenstein, Inc., 75 N. L. R. B. 377, the National Labor Relations Board had occasion to consider and interpret the provisions of Section 9 (f) (g) and (h) and it there laid down a policy from which it has never since deviated. Although in that case the matter had been brought to the Board by the employer, the Board, in refusing to take jurisdiction, said:

"*We construe the amended Act to provide, in essence, that a non-complying labor organization shall not be the beneficiary of any Board investigation of a question concerning representation:* For this reason the Board has declined to proceed to hearing or election on a petition filed by a non-complying union; it has declined to certify such a

of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated." * * * Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences different from other modes of communication. The loyalties and responses [fol. 183] evoked and exacted by picket lines are unlike those flowing from appeals by printed word. * * * However general or loose the language of opinions, the specific situations have controlled decision. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. * * * "a state is not required to tolerate in all places and all circumstances even peaceful picketing * * *."' "

Furthermore, the right to speak freely, as guaranteed by the constitution, is the right to speak for one's self or as the duly authorized agent of another.

For the reasons assigned, the judgments appealed from are affirmed, at the cost of the appellants.

[fol. 184] Hawthorne, J., Dissenting in Part:

It is my view that the exception to the citation filed in behalf of the United Mine Workers of America, District 50, is well founded; and that the majority is in error in affirming the judgment of the lower court which issued an injunction against the association as such.

United Mine Workers of America, District 50, is an unincorporated labor union or voluntary association. It was named as one of the defendants in this suit and cited only through James L. Ledbetter, one of its members. Being an unincorporated association, it cannot be sued under the existing laws of this state because it has no legal existence distinct from that of its members. *

* Except of course as provided in R. S. 13:3471.

Article 446 of the Civil Code provides that "Corporations unauthorized by law or by an act of the Legislature, enjoy no public character, and can not appear in a court of justice, but in the individual name of all the members who compose it, and not a political body; although these corporations may acquire and possess estates, and have common interests as well as other private societies".

In State ex rel. Doane v. General Longshore Workers, 61 So.2d 747, a suit for mandamus against an unincorporated association, the Court of Appeal for the Parish of Orleans in a well reasoned opinion correctly held that such an association may not, in the absence of statute, sue or be sued in its society or company name. The majority opinion in the instant case cites and quotes Act 170 of 1918, R. S. 13:3471(22), and concludes that this statute authorizes the instant suit. This conclusion is incorrect because this is [fol. 185] not an action or suit on an "obligation incurred for the benefit" of the association. Plaintiff here is seeking an injunction against peaceful picketing, and consequently the statute has no application.

In State ex rel. Doane v. General Longshore Workers, supra, the Court of Appeal gave good and valid reasons in support of its decisions that the statute was not applicable in that case. The reasons given and the authorities cited in the Doane case clearly show that the statute is equally inapplicable to the instant case.

In the case now under consideration the majority opinion relies on certain dicta in the case of Godchaux Sugars, Inc., v. Chaisson et al., No. 41569 on our docket, not yet reported, in support of the proposition that an unincorporated group need not be individually cited to be subject to restraint by injunction. In the Godchaux case the union or voluntary association was not sued in its association name, as is the defendant in the instant case, and in fact was not even a party to the suit. Consequently the Godchaux case is not authority on the citation issue in the instant case.

As I pointed out in my dissenting opinion in Douglas Public Service Corp. et al. v. Gaspard et al., 225 La. 972, 74 So.2d 182, and in my concurring opinion in Godchaux Sugars, Inc., v. Chaisson et al., supra, I do not agree that the procedural requirements of the "Little Norris-LaGuardia Act" are unconstitutional. In the Douglas and

Godchaux cases this court in effect held that the statute was unconstitutional, and that a plaintiff seeking injunctive relief in a labor dispute need not follow the procedural requirements set out in the statute. Some doubt has been expressed by members of the bar as to whether the holding in those cases was limited to the particular facts of each case. The holding in the instant case, however, removes any such doubt. Here the majority is affirming a judgment of the lower court granting an injunction against a labor union for peaceful picketing on a public street, although no acts or threats of intimidation, coercion, violence, fraud, breach of the peace, or trespass were committed. This injunction is issued in the teeth of R. S. 23:841 which provides:

[fol. 186] "No court shall issue any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person or persons from doing, whether singly or in concert, any of the following acts:

"* * *

"(5) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, patrolling any public street or any place where persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof * * *."

Consequently the entire act is now as dead as a salted mackerel, made so by judicial proclamation.

However, the holding of the majority on R. S. 23:841 is now the law applicable to cases of this kind, and therefore, for the reasons given in my concurring opinion in the Godchaux case, supra, I am not dissenting on this ground. Nevertheless I am dissenting on the matter of citation which I discussed above.

[fol. 187] IN SUPREME COURT OF LOUISIANA

No. 41,797

and

No. 41,983

(Consolidated)

[Title omitted]

APPLICATION FOR REHEARING

The petition of United Mine Workers of America and 12 other defendants, employees of plaintiff and members of defendant Union, respectfully represents:-

The opinion and decree rendered in this cause, on the 25th day of April, 1955, is erroneous and contrary to the law and evidence, and prejudicial to the interests of applicants, and a rehearing should be granted in this matter for the following reasons, to-wit:

I

This Honorable Court is in error in holding that the employer herein did not have to bargain with and recognize the majority selected bargaining agent of employer's mill employees because the Union had not filed financial and non-communistic affidavits with the Labor Board, and a peaceful picket line set up at employer's plant by the Union and such employees to require such recognition was therefore for an unlawful purpose and subject to State injunction.

[fol. 188] It is to be remembered herein that 179 of the 225 mill employees had properly selected District 50, United Mine Workers of America as their bargaining agent. A demand was made for recognition of said agent for bargaining purposes. This was refused by the employer as the Union had not filed financial and non-communistic affidavits as provided for in the Taft-Hartley Act, 29 U.S.C.A. 159 (f) (g) (h). The Union and the employee members set up a peaceful picket line around the employer's plant on March 1, 1954 which was judicially restrained the next day. The employer was admittedly in interstate commerce. Subsequently, a temporary and permanent injunction were issued by the District Court resulting in these consolidated appeals.

This Honorable Supreme Court makes this issue simple and basic. This Court has held that the picket line (otherwise due protection) was enjoinable solely because the chosen union was not in compliance with the Taft-Hartley Act; that such a union then had no right in any way to require bargaining from the employer and that a picket line seeking to enforce recognition and bargaining was for an illegal purpose and therefore subject to injunction.

The error this Court made was to impose a penalty for non-compliance far in excess of that set up in the Taft-Hartley Act and a penalty in contravention to protected rights guaranteed to non-complying unions by the Taft-Hartley Act.

The only penalty provided by Congress for non-compliance was to deprive such unions of using the processes of the Act to obtain representation elections, (29 U.S.C.A. 159 (f) (g) (h)) and to bring unfair labor practice charges. However, this Court interprets the Act to penalize a non-complying union to the extent that it has no legal bargaining authority or recognition rights.

It is apparent that if an employer had a duty to bargain with a non-complying union properly chosen by a majority of its employees, then a peaceful picket line set up to obtain recognition would be for a legal purpose and not enjoinable. [fol. 189] *That This Honorable Court Was in Error in Its Holding Is Shown by the Fact That Every Federal Circuit Court of Appeals That Has Passed on This Point Is Entirely Contrary to the Conclusion Reached by This Court; and These Federal Decisions Interpreting This Federal Act Have Been Approved by the Federal Supreme Court by the Refusal of Writs of Certiorari.*

This Honorable Court holds that a non-complying union for that fact alone has no bargaining, recognition or picketing right.

The Federal decisions to the contrary are:

NLRB vs. Reed and Prince Mfg. Co.
205 Fed (2) 131
1st Circ., 1953

"The short answer is that Congress has not made compliance with the filing requirements of Sec. 9(f)

(g) and (h) a condition precedent to the obligation of an employer under Sec. 8(a)(5) to bargain collectively with the chosen representative of the employees; such compliance is merely made a condition precedent to invoking the machinery of the Act for the investigation of a question concerning representation, or for the issuance of a complaint charging the commission of unfair labor practices."

Writs were refused by the United States Supreme Court in this case in 346 U. S. 887, 74 S.C.R, 139.

Sec. 8(a)(5) makes it an unfair labor practice for an employer

"to refuse to bargain collectively with the representatives of his employees, subject to the provision of Section 159(a) of this title"

Section 159(a) provides for exclusive bargaining by a Union chosen by a majority of the employees. *There is no other limit placed on this bargaining duty.*

NLRB vs. Pecheur Lozenge Co.
209 F(2) 393, 402
2nd Circ. 1953

"In these circumstances, while failure to file the non-communist affidavits required by Section 9(h) and financial statement and other reports required by Section 9(f) and (g), bars a union from access to the processes of the Board, it does not necessarily destroy the Union's status as bargaining representative for purposes of Section 8(a) 5. West Texas Utilities Co. [fol. 190] vs. NLRB 87 U.S. App. D.C. 179, 184 F. 2d 233, certiorari denied, 341 U.S. 939, 71 S. Ct. 999, 95 L. ed., 1366; NLRB vs. Tennessee Egg Co. 6 Cir., 201 F. 2d 370, reversing 199 F. 2 95 on the authority of NLRB vs. Dant, 344 U.S. 375, 73 S. Ct. 375; NLRB vs. Reed and Prince Mfg. Co., 1 Cir., 205 F. 2d 131, 132. In the latter case, the Court held that "Congress has not made compliance with the filing requirements of 9(f)(g) and (h) a condition precedent to the obligation of an employer under 8(a)(5) to bargain collectively with the chosen representative of the employees."

Writs were refused by the United States Supreme Court in this case in 346 U.S. 887, 74 S.Ct.R. 139.

United Auto Workers v. Wilson Athletic Goods
119 F. Supp. 948

"Plaintiff brings this action under Section 301(a), 29 U.S.C.A. 185 of the Labor Management Act of 1947. The complaint alleges that plaintiff is a voluntary labor organization and that a collective bargaining agreement exists between plaintiff and defendant, the terms of which have been violated by defendant's failure to grant certain employees paid vacations, and that said violation constitutes a breach of the contract. Defendant moves to dismiss the complaint on the following grounds:

* * * * * *

(4) 'Failure to file the non-communist affidavits required in Section 9 of the Act, 29 U.S.C.A. § 159.

* * * * * *

'Furthermore, the union is not required to file the non-communist affidavits in an action of this type. *This requirement is designed merely to deny the facilities of the NLRB to non-complying petitioners, and nowhere in the Act is it set forth as a prerequisite for court action.* This view is confirmed in the case of United Steel Workers of America v. Shakespeare Co., D.C. Mich., 84 F. Supp. 267, 272.

'Defendant's contention in their motion to dismiss, that the court is without jurisdiction for the reason that the plaintiffs failed to comply with Section 9(h) of the Labor Management Relations Act, 29 U.S.C.A. § 159(h), relative to the filing of an anti-communistic affidavit, is without merit for the reason that Section 9(h) of the Act requires such an affidavit only as a condition precedent to proceedings before the National Labor Relations Board.' * * *"

For the foregoing reasons, the motion to dismiss the complaint is hereby denied."

The duty to bargain with the chosen representative of the majority of the employees is not subject to any quali- [fol. 191] fication. Such is shown by Section 7 of the Act.

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively, through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Section 7 of the Act is not affected by or limited to Section 9(f)(g) and (h).

The right to be represented legally by a union of the employees' choice is not dependent on compliance or certification by the Board.

Faribault Daily News vs. Int. Typo Union
53 N.W. (2)36, 47.

"*Plaintiff contends that the union has not filed the non-communist affidavit required by the federal act, and therefore, not being accredited, has no authority to act.* The Joint Conference Report of the Senate House Committees which reported on the Labor Management Relations act of 1947 states: 'It is to be observed that the primary strike for recognition (without a Board certificate) was not prohibited' In Teller, Labor Disputes and Collective Bargaining (1950 Supp.) Sec. 398.94, the author states: 'primary strike for recognition may be called by a union though it is not certified' citing the Senate and House Conference Report above quoted.

In National Labor Relations Board vs. Dahlstrom Metallic Door Co., 2nd Circ., 1940, 112F(2) 756, 757, 6 L. R.R. Man. 746, 747, the Court said:

> The contention that bargaining was not mandatory until the Board had accredited Local 307 as bargaining agent, is frivolous. *An employer is under a duty to bargain as soon as the union representative presents convincing evidence of majority support.* Under Section 7 of the Act the right exists whether the union has or has not been certified as the bargaining representative of the employees."

National Labor Relations Board v. Kobritz, 193 F. (2) 8(14) 1st Cir., 1951

"But the right of employees to bargain collectively through an exclusive bargaining representative is not conditioned upon an antecedent certification by the Board where, as here, the majority status of the union is clearly established otherwise, and the employer has no bona fide doubt of such majority status, but seeks to delay bargaining negotiations while resorting to various coercive tactics designed to dissipate the union majority support. *National Labor Relations Board* v. *Reed and Prince Mfg. Co.*, supra; National Labor Relations Board v. National Seal Corp., 2nd Cir., 127 F. (2d) 776; National Labor Relations Board v. Franks Bros. Co., 1st Cir., 137 F. (2d) 989, affirmed 321 U.S. 702, 64 S. Ct. 817, 88 L. Ed. 435; National Labor Relations Board v. Harris-Woodson Co., 4th Cir., 162 F. (2d) 97."

[fol. 192] On December 6, 1954, the Federal Supreme Court approved of this *Kobritz* decision in

Brooks v. NLRB
75 SCR 176
Adv. Sheets Dec. 15, 1954.

in which it stated:

". . . Board certification could only be granted as a result of an election, 61 Stat. 144, 29 U.S.C.A. 159(c)(1) though an employer would presumably still be under a duty to bargain with an uncertified union that had a clear majority,—see National Labor Relations Board v. Kobritz I Cir. 193 F. 2d 8."

The right to picket, bargain or obtain recognition is not contingent on certification or compliance. If Congress wished to say recognition or bargaining was legally due only to certified or complying unions, it could have said so. It is sufficient to say that Congress has not said so. Neither has any Federal Court interpreting the Act. All federal decisions have been to the contrary.

The reasoning of this Honorable Court in holding that a

non-complying union and its member employees could not legally picket for recognition was based upon the assertion that the union by non-compliance prevented the employer from having such union certified.

The fallacy of the Court's reasoning (in interpreting this Federal Act) is assuming that the employer had a right to certification in this case.

This Honorable Court held that since the employer could not get certification the union could not get recognition through the means of a peaceful picket line.

But the employer only is entitled to certification when there is a doubt as to majority representation.

If the union had been in compliance the employer would not have gotten certification in this case, as such is only ordered by the Labor Board when necessary to decide a question of majority representation.

[fol. 193] Here 179 of 225 employees had joined the defendant union and signed authorization cards as shown by the record.

There is no absolute right to certification. The Act says in Section 159(c)(1) and (B) (29 USCA 159 (c)(1) and (B))

> (c) (1) Whenever a petition shall have been filed . . .
>
> (B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative . . . .; the Board shall investigate such petition *and if it has reasonable cause to believe that a question of representation affecting commerce exists* shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election."

As shown by the above, the Board decides as to whether an election shall be called to certify a union. And this will not be done by the Board where the investigation shows that there has been a bona fide and current selection of a representative by prior selection by the employees.

This is shown by the following cases:

United States Office and Professional Workers of America vs. Smiley, et al, 77 F. Supp. 659. Syllabus:

"An employer's insistence in every case upon certification by National Labor Relations Board of proper bargaining agencies is an 'unfair labor practice', and employer has duty to commence bargaining whenever union presents satisfactory evidence of possession of a majority of authorizations in appropriate unit.

The presentation by labor organization of satisfactory evidence of a majority authorization in an appropriate bargaining unit dispenses with necessity of an election, which is directed only where evidence is unsatisfactory."

N.L.R.B. v. Clearfield Cheese Co., 213 F. (2d) 70 (3rd Cir. 1954):

"Where, at time union requested recognition from employer, there were approximately 66 production and maintenance employees, and union had at least 40 authorization cards executed by such employees, employer's refusal to negotiate an agreement, or to recognize the union unless there should be an ordered election was a prohibited refusal to bargain collectively."

[fol. 194] *Beaver Machine and Tool Co., 97 N.L.R.B., 33, 34.*

"As we have frequently held, an employer who, in good faith, doubts the majority status of a union which demands recognition as the bargaining representative of his employees, may lawfully insist that the union prove its majority in a Board-conducted election. But if, in insisting upon an election, the employer is motivated not by a bona fide doubt as to the union's majority standing, but by a rejection of the collective bargaining principle or a desire to gain time in which to undermine the union, the demand for an election is no defense to a refusal-to-bargain charge, if the union in fact represented a majority of employees in an appropriate unit at the time of the refusal to bargain."

When this Honorable Court stated on page 16 of its opinion (which is the gist of the decision) that

> "... for it is not only ineligible for certification, but cannot compel the employer to recognize it as the representative of its employees."

this Court, with all due respect, was patently in error.

While the union cannot compel the employer, through the Board, the Act does not preclude legal demands through a peaceful picket line.

II

This Honorable Court was in error in not finding that an unfair labor practice was charged and therefore sustaining the plea to the State Court's jurisdiction, which charge can be solely litigated before the Labor Board.

In paragraph 10 of its petition the plaintiff alleged:

> "Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the forcing of petitioner to interfere with the rights of its employees as expressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as a representative of its employees in absence of their selection of said union as their representative."

This is, of course, the identical unfair labor practice charged in Garner vs. Teamsters, 346 U.S. 485 i.e. bringing pressure on the employees in the free exercise of their selection of a bargaining agent through the medium of the employer.

[fol. 195] That picketing to interfere with the employees' selection by pressure on the employer, is an unfair labor practice, is shown by 29 U.S.C. 158 (a) (b).

> 158(b) It shall be an unfair labor practice for a labor organization or its agents:
>
> (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3).

Subsection (a) (3)

"It shall be an unfair labor practice for an employer . . . (3) by discrimination in regard to hire or tenure of employment *or any term or condition of employment to encourage or discourage membership in any labor organization.*"

The Garner case has been strengthened and reaffirmed by a recent decision in

Weber vs. Anheuser-Busch, Inc., 75 S. Ct. 480
Adv. Sheets April 15, 1955

This matter was decided on March 28, 1955 and has not been considered by this Honorable Court in rendering the decision herein. This *Weber* decision holds that the *charging* of an unfair labor practice defeats State jurisdiction.

"A state may not enjoin under its own labor statute conduct which has been made an "unfair labor practice" under the federal statutes. Such was the holding in the Garner case, supra. The Court pointed out the exclusive primary jurisdiction to pass on the union's picketing is delegated by the Taft-Hartley Act to the National Labor Relations Board.

• • • • • • •

But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the Federal Act, may be reasonably deemed to come within the protection afforded by the Act, the State court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance."

Of course, whether an unfair labor practice exists in a case, so as to exclude state jurisdiction, depends on what the petitioner alleges. In the above paragraph 10 the petitioner alleged the designated unfair labor practice. The Weber case bars State Court jurisdiction.

[fol. 196] This Honorable Court stated that the union was not on compliance and so was pickeling illegally, which was not an unfair labor practice; therefore this Arkansas Oak case did not involve an unfair practice.

The fallacy of this position is apparent when we see that under the Weber case and Garner case, the existence of an unfair labor practice in a case depends on what the plaintiff alleges and puts into issue. The lack of compliance does not affect the unfair practice alleged. Can it be reasonably said that where a complying union commits acts constituting an unfair labor practice, that the identical acts by a non-complying union do not also constitute an unfair labor practice. The Garner and Weber cases require all unfair labor practice cases be litigated solely before the Labor Board, whether or not the alleged acts are unlawful under State or Federal law. The identity of the union does not alter the alleged unfair labor practice. It is apparent that if District 50 had been in compliance, that this Court would, or should have, maintained the pleaded exclusive jurisdiction of the Labor Board. How can the failure to file complying affidavits affect the proper jurisdiction. Under Section 160 (b) of the Act, a non-complying union is equally amenable to an unfair labor charge hearing before the Labor Board. This is shown by the following cases:

Ex parte, DeSilva; 199 P. (2d) 6:

> "This court there held that the declared intent and purpose of the Labor Management Relations Act, 1947, was to vest exclusive jurisdiction in the National Labor Relations Board over unfair labor practices affecting interstate commerce and to vest in the courts generally jurisdiction only of actions for damages arising out of the commission of such practices, and that the act deprived the superior courts of original equitable jurisdiction in such cases. No distinction may be made here because the National Labor Relations Board had denied the company's petition for certification of a union representative. By the denial the board did not divest itself of jurisdiction to determine whether the defendants were committing unfair labor practices affecting interstate commerce which should be enjoined pursuant to the procedure provided by the act. Its exclusive

[fol. 197] jurisdiction over that matter had not been invoked by the plaintiffs. *And assuming the interstate character of the commerce, the absence of the required reports and affidavits did not affect the jurisdiction of the board to act on such a petition of the plaintiffs had it been filed.*"

Gerry vs Superior Court
194 F(2) 689

"The petitioner makes much of the fact that the defendant unions, as alleged in the complaint in the action, have not filed the required financial reports and affidavits under the 1947 Act which are a prerequisite to the exercise of jurisdiction by the National Labor Relations Board to proceed on a charge of unfair labor practice made by a labor organization. It is claimed that the union's failure to file such reports and affidavits justifies the present action for injunctive relief against them at the suit of the employer. It is a sufficient observation in this respect to say that here it is the employer who is asserting unfair labor practices on the part of labor organizations. The employer as well as the union is now required by the 1947 Act to proceed before the board to obtain appropriate relief from unfair labor practices affecting interstate commerce. The alleged cause of action for injunctive relief presents matters for the board to determine in the first instance pursuant to the exercise of power vested by the National Labor Relations Act as amended by the 1947 Act. There is nothing in the Act as so amended which indicate that these unions may not thus be subject to the appropriate procedure thereby provided. *Inasmuch as the filing of the required documents by labor organizations is not made a prerequisite to the exercise of jurisdiction by the board on a charge of unfair labor practices made by an employer, there is no showing of inadequacy of the available administrative remedy.*"

It therefore follows that having charged an unfair labor practice against the defendant union, the complaining plaintiff in interstate commerce must file such with the Labor

Board. This Honorable Court was in error in not maintaining the plea to the jurisdiction of the District Court.

III

This Honorable Court was in error in holding that the plant employees could not require bargaining through their selected union as such curtailed their protected right of freedom of choice.

[fol. 198] Section 7 of the Taft-Hartley Act provides:

"Employees shall have the right to self organization, to form, join or assist labor organizations *to bargain collectively through representatives of their own choosing*, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and shall have the right to refrain from any or all of such activities *except* to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 158(a)(3) of this title."

The above section guarantees to employees the right to choose their own bargaining agent; to deal through such exclusive agents and to picket and strike (concerted activities) for the enforcement of this right and rights. *There is only one exception* to these rights, i. e. 158 (a) (3) dealing with bargaining agreements which is not pertinent here. *158 (a)(5) requires the employer to bargain with the chosen representative.*

The right to choose the agent, to bargain through this agent and to picket and to strike to enforce such right, are protected rights under Sections 157 and 158 (a)(5).

A State statute or State injunction cannot qualify, limit or affect these rights.

However, this Honorable Court has nullified the selection of the employees in this case by holding that the Arkansas Oak employees cannot function through District 50, United Mine Workers. This Honorable Court holds that Section 159 (f)(g) and (h) requiring filing of financial

and non-communist affidavits is a limit on the rights guaranteed in 157 and 158 (a)(3). This is not so.

Unfortunately, counsel did not have the Weber v. Anheuser-Busch Inc. case (decided March 28, 1955) when this matter was submitted to this Court. The Weber case shows conclusively in delineating Federal jurisdiction, that the right to peacefully picket for recognition of the selected [fol. 199] agent cannot be qualified by State injunction or statute. This is a protected right immune to restraint by any interpretation of the Federal or State act. In the Weber case the Court stated:

> "The Court has ruled that a State may not prohibit the exercise of rights which the federal acts protect. Thus, in Hill vs. State of Florida, ex rel. Watson, 325 U. S. 538, 65 S. Ct. 1373, 1375 89 L. Ed. 1782, the State enjoined a labor union *from functioning until it had complied with certain statutory requirements.* The injunction was invalidated on the ground that the Wagner Act included a "federally established right to collective bargaining" with which the injunction conflicted. International Union of United Auto, Aircraft and Agr. Implement Workers of America vs. O'Brien, 339 U. S. 454, 70 S. Ct. 781, 94 L. Ed., 978, involved the strike-vote provisions of a State act which prohibited the calling of a strike *until a specific statutory procedure had been followed.* The State act was held to conflict not only with the procedure and other requirements of the Taft Hartley strike provisions *but also with the protection afforded by Section 7 of that Act.* In Amalgamated Association of St. Elec. Ry. and Motor Coach Emp. of America vs. Wisconsin Employment Relations Board, 340 U. S. 383, 71 S. Ct. 359, 95 L. Ed. 364, the State Court issued an injunction under a statute which made it a misdemeanor to interrupt by strike any essential public utility services. It was held that the State statute was invalid in that it denied a right which Congress had guaranteed under Sec. 7 of the Taft-Hartley Act—the right to strike peacefully to enforce union demands for wages, hours and conditions.

* * * * * * *

However, the point is pertinent in our discussion, because even if it were clear that no unfair labor practices were involved, it would not necessarily follow that the State was free to issue its injunction. *If this conduct does not fall within the prohibitions of Sec. 8 of the Taft-Hartley Act, it may fall within the protection of Sec. 7 as concerted activity for the purpose of mutual aid or protection.*

It is apparent from a reading of Section 157 (Sec. 7) that the right to peacefully picket for recognition of the selected union, is not qualified by any filing requirements under the Federal Act. Such was not the intent of Congress as is shown by this Weber case.

[fol. 200] It follows that the decision of this Honorable Court which holds such picketing unlawful until the financial and non-communistic affidavits are filed, is in error.

For the foregoing reasons, applicants pray that after due consideration, a rehearing be granted in this cause and that, finally, the judgments of the District Court be avoided and reversed and judgments be rendered in favor of defendants, and dismissing the suit filed herein and for all general and equitable relief.

Respectfully submitted, Signed James I. McCain, Attorney for Applicants-defendants, 818 Whitney Building, New Orleans, La.

Certificate of service (omitted in printing).

[fol. 201] In Supreme Court of the State of Louisiana

Court was duly opened, pursuant to adjournment. Present, Their Honors: John B. Fournet, Chief Justice, Amos Lee Ponder, Joe B. Hamiter, Frank W. Hawthorne, E. Howard McCaleb, Harold A. Moise, and James D. Simon, Associate Justices.

Minute Entry of Action by the Court Upon Application for Rehearing—May 31, 1955.

Rehearing was refused in the following case: 41,797, 41,983—Arkansas Oak Flooring Co. v. United Mine Workers.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 202] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 203] Supreme Court of the United States, October Term, 1955

No. 227

[Title omitted]

Order Allowing Certiorari.—Filed October 17, 1955

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. The Solicitor General is invited to file a brief setting forth the views of the National Labor Relations Board.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[File endorsement omitted.]

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